

MANATT, PHELPS & PHILLIPS, LLP
SUSAN E. HOLLANDER (Bar No. CA 133473)
BRITT L. ANDERSON (Bar No. CA 212092)
E-mail: patrademarks@manatt.com
1001 Page Mill Road, Building 2
Palo Alto, CA 94304-1006
Telephone: (650) 812-1300
Facsimile: (650) 213-0260

MANATT, PHELPS & PHILLIPS, LLP
SHARI MULROONEY WOLLMAN (Bar No. CA 137142)
E-mail: swollman@manatt.com
11355 West Olympic Boulevard
Los Angeles, CA 90064
Telephone: (310) 312-4000
Facsimile: (310) 312-4224

Attorneys for Plaintiff
24 Hour Fitness USA, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT
OAKLAND DIVISION

24 HOUR FITNESS USA, INC.,

Plaintiff,

vs.

APEX STORES, LLC; APEX, LLC;
APEX AT HOME, LLC,

Defendants.

No. CV 08-01681 SBA

**DECLARATION OF BRITT L.
ANDERSON**

I, Britt L. Anderson, declare as follows:

1. I am associate with Manatt, Phelps & Phillips, LLP. I have personal knowledge of the facts set forth in this declaration, except those stated on information and belief. If called and sworn as a witness, I could and would competently testify thereto.

2. Attached hereto as Exhibit A is a true and correct copy of an affidavit filed by Apex Stores, LLC with its trademark application with the U.S. Patent and Trademark Office

1 (“PTO”) under Application Serial No. 78/928,052 for the mark APEX COMPANIES, which I
2 downloaded from the PTO website on or about August 19, 2008.

3 3. Attached hereto as Exhibit B is a true and correct copy of an affidavit filed by
4 Apex Stores, LLC with its trademark application with the PTO under Registration No. 3,244,685
5 for the mark APEX COMPANIES, which I downloaded from the PTO website on or about
6 August 19, 2008.

7 4. Attached hereto as Exhibit C is a true and correct copy of an affidavit filed by
8 Apex Stores, LLC with its trademark application with the PTO under Application Serial No.
9 78/928,022 for the mark APEX COMPANIES, which I downloaded from the PTO website on or
10 about August 19, 2008.

11 5. Attached hereto as Exhibit D is a true and correct copy of an affidavit filed by
12 Apex Stores, LLC with its trademark application with the PTO under Registration No. 3,356,317
13 for the mark APEX COMPANIES, which I downloaded from the PTO website on or about
14 August 19, 2008.

15 6. Attached hereto as Exhibit E is a true and correct copy of Apex Stores, LLC’s
16 Lanham Act Section 8 and 15 Affidavit filed with the PTO under Registration No. 2,562,812 for
17 the mark APEX ONLINE, which I downloaded from the PTO website on or about August 19,
18 2008.

19 7. Attached hereto as Exhibit F is a true and correct copy of Apex Stores, LLC’s
20 Lanham Act Section 8 and 15 Affidavit filed with the PTO under Registration No. 2,443,933 for
21 the mark APEX STORES, which I downloaded from the PTO website on or about August 19,
22 2008.

23 8. Attached hereto as Exhibit G is a true and correct copy of Apex Stores, LLC’s
24 Lanham Act Section 8 and Affidavit filed with the PTO under Registration No. 1,847,961 for the
25 mark APEX, which I downloaded from the PTO website on or about August 19, 2008.

26 9. Attached hereto as Exhibit H is a true and correct copy Apex Stores, LLC’s
27 Lanham Act Section 8 and 15 Affidavit filed with the PTO under Registration No. 2,155,905 for
28 the mark APEX, which I downloaded from the PTO website on or about August 19, 2008.

1 10. Attached hereto as Exhibit I are true and correct copies of the Whois domain name
2 registration records from CSC Corporate Domains for the domain names <apexstores.com> and
3 <apexathome.com>, which I downloaded from website at <http://www.incspot.com> on or about
4 June 26, 2008.

5 11. Attached hereto as Exhibit J is a true and correct copy of the Whois domain name
6 registration record from CSC Corporate Domains for the domain name
7 <apexhealthandfitness.com>, which I downloaded from the website at <http://www.incspot.com> on
8 or about July 17, 2008.

9 12. Attached hereto as Exhibit K is a true and correct copy of a webpage accessed
10 when I typed the Internet domain addresses <apexathome.com> and <apexstores.com> into my
11 Internet browser on or about August 19, 2008.

12 13. Attached hereto as Exhibit L are true and correct copies of printouts I downloaded
13 from the online records of the Rhode Island Office of Secretary of State regarding Apex Stores,
14 LLC, Apex at Home, LLC and Apex, LLC at the website <http://ucc.state.ri.us> on or about May
15 14, 2008.

16 14. Attached hereto as Exhibit M is a true and correct copy of a printout I downloaded
17 from the online records of the Rhode Island Office of Secretary of State regarding Zelby
18 Holdings, Inc. at the website <http://ucc.state.ri.us> on or about June 25, 2008.

19 15. Attached hereto as Exhibit N is a true and correct copy of the Trademark Trial and
20 Appeal Board's ("TTAB") Order dated August 7, 2008 to Suspend Apex Stores, LLC and Apex,
21 LLC v. 24 Hour Fitness USA, Inc., Cancellation No. 92048378, pending a civil action between
22 the parties.

23 16. Attached hereto as Exhibit O is a true and correct copy of a printout I obtain on
24 August 19, 2008 from the online records of the TTAB Inquiry System reflecting opposition or
25 cancellation proceedings filed by Apex Stores, LLC from November 1, 2007 through August 19,
26 2008.

27 17. Attached hereto as Exhibit P is a true and correct copy of a printout I obtained on
28 August 19, 2008 from the online records of the TTAB Inquiry System reflecting opposition or

1 cancellation proceedings filed by Apex, LLC involving "APEX" trademarks from November 1,
2 2007 to August 19, 2008.

3 18. Attached hereto as Exhibit Q is a true and correct copy of the Report and
4 Recommendation issued by Magistrate Judge David L. Martin of the United States District Court
5 for the District of Rhode Island in Apex, LLC and Apex Stores, LLC v. 24 Hour Fitness USA,
6 Inc., Case No. CA 08-169 ML, on August 15, 2008.

7 I declare under penalty of perjury under the laws of the United States that the
8 foregoing is true and correct and that this Declaration was executed on August 21, 2008 at San
9 Francisco, California.

10
11 /s/Britt L. Anderson

12 Britt L. Anderson
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

Document Description: **Application**Mail / Create Date: **12-Jul-2006**[Previous Page](#)[Next Page](#)

You are currently on page 1 of 3



PTO Form 1478 (Rev 6/2005)

OMB No. 0651-0009 (Exp xx/xx/xxxx)

Trademark/Service Mark Application, Principal Register**Serial Number: 78928052****Filing Date: 07/12/2006****The table below presents the data as entered.**

Input Field	Entered
MARK SECTION	
MARK	APEX COMPANIES
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	APEX COMPANIES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
OWNER SECTION	
NAME	Apex Stores, LLC
STREET	100 Main Street
CITY	Pawtucket
STATE	Rhode Island
ZIP/POSTAL CODE	02860
COUNTRY	United States
AUTHORIZED EMAIL COMMUNICATION	No
LEGAL ENTITY SECTION	
TYPE	LIMITED LIABILITY COMPANY
STATE/COUNTRY UNDER WHICH ORGANIZED	Rhode Island
GOODS AND/OR SERVICES SECTION	
INTERNATIONAL CLASS	036

DESCRIPTION	shopping mall services and leasing of shopping mall space; real estate investment; real estate management; real estate development; financial services in the field of investments and financing
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 09/01/2002
FIRST USE IN COMMERCE DATE	At least as early as 09/01/2002
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT4\IMAGEOUT4 \789\280 \78928052.xml\AP P0003.JPG
SPECIMEN DESCRIPTION	promotional web page describing the services and bearing the mark
ADDITIONAL STATEMENTS SECTION	
PRIOR REGISTRATION(S)	Applicant claims ownership of U.S. Registration Number(s) 2443933 and 2918976.
SIGNATURE SECTION	
SIGNATURE	/John E. Ottaviani/
SIGNATORY NAME	John E. Ottaviani
SIGNATORY DATE	07/12/2006
SIGNATORY POSITION	Attorney for Applicant
PAYMENT SECTION	
NUMBER OF CLASSES	1
NUMBER OF CLASSES PAID	1
SUBTOTAL AMOUNT	325
TOTAL AMOUNT	325
PAYMENT METHOD	CC
ATTORNEY	
NAME	John E. Ottaviani
FIRM NAME	Edwards Angell Palmer & Dodge LLP
STREET	P.O. Box 55874
CITY	Boston
STATE	Massachusetts
ZIP/POSTAL CODE	02205
COUNTRY	United States
PHONE	401-274-9200

EMAIL	trademark@eapdlaw.com
AUTHORIZED EMAIL COMMUNICATION	Yes
ATTORNEY DOCKET NUMBER	42707/65893-2
OTHER APPOINTED ATTORNEY(S)	David G. Conlin; George W. Neuner; Linda M. Buckley; Peter F. Corless; Peter J. Manus; Lisa Swiszc Hazzard; Christine C. O'Day; Kathleen B. Carr; Steven M. Jensen; Peter J. Manso; John B. Alexander; Kathryn A. Piffat; William J. Daley, Jr.; David A. Tucker; John J. Penny, Jr.; Howard M. Gitten; Gregory B. Butler; Barry Kramer; Scott F. Wofsy; George N. Chaclas, David J. Silvia; Stephana E. Patton; Jeffrey D. Hsi; Margaret J. McLaren; Mark Russett; Amy Leahy; Robert J. Tosti; Brian M. Gaff; Carrie Webb-Olson; Kathryn Grant Belleau; F. Andrew Anderson and Patrick J. Concannon
CORRESPONDENCE SECTION	
NAME	John E. Ottaviani
FIRM NAME	Edwards Angell Palmer & Dodge LLP
STREET	P.O. Box 55874
CITY	Boston
STATE	Massachusetts
ZIP/POSTAL CODE	02205
COUNTRY	United States
PHONE	401-274-9200
EMAIL	trademark@eapdlaw.com
AUTHORIZED EMAIL COMMUNICATION	Yes
FILING INFORMATION	
SUBMIT DATE	Wed Jul 12 16:36:46 EDT 2006
TEAS STAMP	USPTO/BAS-6622883210-2006 0712163646658365-78928052 -200c2e9a6f79564aeb824795 4ab266eb2-CC-437-20060712 163512905865

PTO Form 1478 (Rev 6/2005)

OMB No. 0651-0009 (Exp xx/xx/xxxx)

Trademark/Service Mark Application, Principal Register**Serial Number: 78928052****Filing Date: 07/12/2006****To the Commissioner for Trademarks:****MARK:** (Standard Characters, see mark)

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The literal element of the mark consists of APEX COMPANIES.

The applicant, Apex Stores, LLC, a limited liability company organized under the laws of Rhode Island, residing at 100 Main Street, Pawtucket, Rhode Island, United States, 02860, requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

The applicant, or the applicant's related company or licensee, is using the mark in commerce, and lists below the dates of use by the applicant, or the applicant's related company, licensee, or predecessor in interest, of the mark on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

International Class 036: shopping mall services and leasing of shopping mall space; real estate investment; real estate management; real estate development; financial services in the field of investments and financing

In International Class 036, the mark was first used at least as early as 09/01/2002, and first used in commerce at least as early as 09/01/2002, and is now in use in such commerce. The applicant is submitting or will submit one specimen for *each class* showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) promotional web page describing the services and bearing the mark.

Specimen - 1

Applicant claims ownership of U.S. Registration Number(s) 2443933 and 2918976.

The applicant hereby appoints John E. Ottaviani and David G. Conlin; George W. Neuner; Linda M. Buckley; Peter F. Corless; Peter J. Manus; Lisa Swiszc Hazzard; Christine C. O'Day; Kathleen B. Carr; Steven M. Jensen; Peter J. Manso; John B. Alexander; Kathryn A. Piffat; William J. Daley, Jr.; David A. Tucker; John J. Penny, Jr.; Howard M. Gitten; Gregory B. Butler; Barry Kramer; Scott F. Wofsy; George N. Chaclas, David J. Silvia; Stephana E. Patton; Jeffrey D. Hsi; Margaret J. McLaren; Mark Russett; Amy Leahy; Robert J. Tosti; Brian M. Gaff; Carrie Webb-Olson; Kathryn Grant Belleau; F. Andrew Anderson and Patrick J. Concannon of Edwards Angell Palmer & Dodge LLP, P.O. Box 55874, Boston, Massachusetts, United States, 02205 to submit this application on behalf of the applicant. The attorney docket/reference number is 42707/65893-2.

The USPTO is authorized to communicate with the applicant or its representative at the following email address: trademark@eapdlaw.com.

A fee payment in the amount of \$325 will be submitted with the application, representing payment for 1 class

(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /John E. Ottaviani/ Date: 07/12/2006

Signatory's Name: John E. Ottaviani

Signatory's Position: Attorney for Applicant

Mailing Address:

John E. Ottaviani

P.O. Box 55874

Boston, Massachusetts 02205

RAM Sale Number: 437

RAM Accounting Date: 07/13/2006

Serial Number: 78928052

Internet Transmission Date: Wed Jul 12 16:36:46 EDT 2006

TEAS Stamp: USPTO/BAS-6622883210-2006071216364665836

5-78928052-200c2e9a6f79564aeb8247954ab26

6eb2-CC-437-20060712163512905865

[TDR Home](#)

This document may be displayed as a PDF file containing images without text. You may view online or save the entire document by clicking on the file download icon in the upper right corner of this page. [\[required PDF viewer\]](#)

[FAQ: Are you seeing only the first page of this PDF document?](#)

If you need help:

- **General trademark information:** Please e-mail TrademarkAssistanceCenter@uspto.gov, or telephone either 571-272-9250 or 1-800-786-9199.
- **Technical help:** For instructions on how to use TDR, or help in resolving **technical** glitches, please e-mail TDR@uspto.gov. If outside of the normal business hours of the USPTO, please e-mail [Electronic Business Support](#), or call 1-800-786-9199.
- **Questions about USPTO programs:** Please e-mail [USPTO Contact Center \(UCC\)](#).

NOTE: Within any e-mail, please include your telephone number so we can talk to you directly, if necessary. Also, include the relevant serial number or registration number, if existing.

EXHIBIT B

Document Description: **Application**

Mail / Create Date: **12-Jul-2006**

[Previous Page](#)

[Next Page](#)

You are currently on page **1** of **3**



PTO Form 1478 (Rev 6/2005)

OMB No. 0651-0009 (Exp xx/xx/xxxx)

Trademark/Service Mark Application, Principal Register

Serial Number: 78928036

Filing Date: 07/12/2006

The table below presents the data as entered.

Input Field	Entered
MARK SECTION	
MARK	<u>APEX COMPANIES</u>
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	APEX COMPANIES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
OWNER SECTION	
NAME	Apex Stores, LLC
STREET	100 Main Street
CITY	Pawtucket
STATE	Rhode Island
ZIP/POSTAL CODE	02860
COUNTRY	United States
AUTHORIZED EMAIL COMMUNICATION	No
LEGAL ENTITY SECTION	
TYPE	LIMITED LIABILITY COMPANY
STATE/COUNTRY UNDER WHICH ORGANIZED	Rhode Island
GOODS AND/OR SERVICES SECTION	
INTERNATIONAL CLASS	040

DESCRIPTION	custom finishing and embellishment of promotional items, namely, embroidery, embossing, engraving, customized printing, imprinting, screen printing and pad printing with company names, logos, monograms, words, and/or pictures for promotional and advertising purposes on the goods of others, namely, sportswear, apparel and other products
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 09/01/2002
FIRST USE IN COMMERCE DATE	At least as early as 09/01/2002
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT4\IMAGEOUT4\789\280\78928036.xml1\AP P0003.JPG
SPECIMEN DESCRIPTION	promotional web page describing the services and bearing the mark
ADDITIONAL STATEMENTS SECTION	
PRIOR REGISTRATION(S)	Applicant claims ownership of U.S. Registration Number(s) 2443933 and 2918976.
SIGNATURE SECTION	
SIGNATURE	/John E. Ottaviani/
SIGNATORY NAME	John E. Ottaviani
SIGNATORY DATE	07/12/2006
SIGNATORY POSITION	Attorney for Applicant
PAYMENT SECTION	
NUMBER OF CLASSES	1
NUMBER OF CLASSES PAID	1
SUBTOTAL AMOUNT	325
TOTAL AMOUNT	325
PAYMENT METHOD	CC
ATTORNEY	
NAME	John E. Ottaviani
FIRM NAME	Edwards Angell Palmer & Dodge LLP
STREET	P.O. Box 55874
CITY	Boston
STATE	Massachusetts
ZIP/POSTAL CODE	02205

COUNTRY	United States
PHONE	401-274-9200
EMAIL	trademark@eapdlaw.com
AUTHORIZED EMAIL COMMUNICATION	Yes
ATTORNEY DOCKET NUMBER	42707/65893-3
OTHER APPOINTED ATTORNEY(S)	David G. Conlin; George W. Neuner; Linda M. Buckley; Peter F. Corless; Peter J. Manus; Lisa Swiszc Hazzard; Christine C. O'Day; Kathleen B. Carr; Steven M. Jensen; Peter J. Manso; John B. Alexander; Kathryn A. Piffat; William J. Daley, Jr.; David A. Tucker; John J. Penny, Jr.; Howard M. Gitten; Gregory B. Butler; Barry Kramer; Scott F. Wofsy; George N. Chaclas, David J. Silvia; Stephana E. Patton; Jeffrey D. Hsi; Margaret J. McLaren; Mark Russett; Amy Leahy; Robert J. Tosti; Brian M. Gaff; Carrie Webb-Olson; Kathryn Grant Belleau; F. Andrew Anderson and Patrick J. Concannon
CORRESPONDENCE SECTION	
NAME	John E. Ottaviani
FIRM NAME	Edwards Angell Palmer & Dodge LLP
STREET	P.O. Box 55874
CITY	Boston
STATE	Massachusetts
ZIP/POSTAL CODE	02205
COUNTRY	United States
PHONE	401-274-9200
EMAIL	trademark@eapdlaw.com
AUTHORIZED EMAIL COMMUNICATION	Yes
FILING INFORMATION	
SUBMIT DATE	Wed Jul 12 16:30:22 EDT 2006
TEAS STAMP	USPTO/BAS-6622883210-2006 0712163022672829-78928036 -200a8c31172751bdf263a699 c8e216ad36-CC-411-2006071 2162906313822

PTO Form 1478 (Rev 6/2005)

OMB No. 0651-0009 (Exp xx/xx/xxxx)

Trademark/Service Mark Application, Principal Register

Serial Number: 78928036

Filing Date: 07/12/2006

To the Commissioner for Trademarks:

MARK: (Standard Characters, see mark)

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The literal element of the mark consists of APEX COMPANIES.

The applicant, Apex Stores, LLC, a limited liability company organized under the laws of Rhode Island, residing at 100 Main Street, Pawtucket, Rhode Island, United States, 02860, requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

The applicant, or the applicant's related company or licensee, is using the mark in commerce, and lists below the dates of use by the applicant, or the applicant's related company, licensee, or predecessor in interest, of the mark on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

International Class 040: custom finishing and embellishment of promotional items, namely, embroidery, embossing, engraving, customized printing, imprinting, screen printing and pad printing with company names, logos, monograms, words, and/or pictures for promotional and advertising purposes on the goods of others, namely, sportswear, apparel and other products

In International Class 040, the mark was first used at least as early as 09/01/2002, and first used in commerce at least as early as 09/01/2002, and is now in use in such commerce. The applicant is submitting or will submit one specimen for *each class* showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) promotional web page describing the services and bearing the mark.

Specimen - 1

Applicant claims ownership of U.S. Registration Number(s) 2443933 and 2918976.

The applicant hereby appoints John E. Ottaviani and David G. Conlin; George W. Neuner; Linda M. Buckley; Peter F. Corless; Peter J. Manus; Lisa Swiszc Hazzard; Christine C. O'Day; Kathleen B. Carr; Steven M. Jensen; Peter J. Manso; John B. Alexander; Kathryn A. Piffat; William J. Daley, Jr.; David A. Tucker; John J. Penny, Jr.; Howard M. Gitten; Gregory B. Butler; Barry Kramer; Scott F. Wofsy; George N. Chaclas, David J. Silvia; Stephana E. Patton; Jeffrey D. Hsi; Margaret J. McLaren; Mark Russett; Amy Leahy; Robert J. Tosti; Brian M. Gaff; Carrie Webb-Olson; Kathryn Grant Belleau; F. Andrew Anderson and Patrick J. Concannon of Edwards Angell Palmer & Dodge LLP, P.O. Box 55874, Boston, Massachusetts, United States, 02205 to submit this application on behalf of the applicant. The attorney docket/reference number is 42707/65893-3.

The USPTO is authorized to communicate with the applicant or its representative at the following email address: trademark@eapdlaw.com.

A fee payment in the amount of \$325 will be submitted with the application, representing payment for 1 class (es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /John E. Ottaviani/ Date: 07/12/2006

Signatory's Name: John E. Ottaviani

Signatory's Position: Attorney for Applicant

Mailing Address:

John E. Ottaviani

P.O. Box 55874

Boston, Massachusetts 02205

RAM Sale Number: 411

RAM Accounting Date: 07/13/2006

Serial Number: 78928036

Internet Transmission Date: Wed Jul 12 16:30:22 EDT 2006

TEAS Stamp: USPTO/BAS-6622883210-2006071216302267282

9-78928036-200a8c31172751bdf263a699c8e21

6ad36-CC-411-20060712162906313822

TDR Home

This document may be displayed as a PDF file containing images without text. You may view online or save the entire document by clicking on the file download icon in the upper right corner of this page. [[required PDF viewer](#)]

[FAQ: Are you seeing only the first page of this PDF document?](#)

If you need help:

- **General trademark information:** Please e-mail TrademarkAssistanceCenter@uspto.gov, or telephone either 571-272-9250 or 1-800-786-9199.
- **Technical help:** For instructions on how to use TDR, or help in resolving **technical** glitches, please e-mail TDR@uspto.gov. If outside of the normal business hours of the USPTO, please e-mail [Electronic](#)

Business Support, or call 1-800-786-9199.

- **Questions about USPTO programs:** Please e-mail USPTO Contact Center (UCC).

NOTE: Within any e-mail, please include your telephone number so we can talk to you directly, if necessary. Also, include the relevant serial number or registration number, if existing.

EXHIBIT C

Document Description: **Application**Mail / Create Date: **12-Jul-2006**[Previous Page](#)[Next Page](#)You are currently on page **1** of **3**

PTO Form 1478 (Rev 6/2005)

OMB No. 0651-0009 (Exp xx/xx/xxxx)

Trademark/Service Mark Application, Principal Register

Serial Number: 78928022**Filing Date: 07/12/2006**

The table below presents the data as entered.

Input Field	Entered
MARK SECTION	
MARK	<u>APEX COMPANIES</u>
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	APEX COMPANIES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
OWNER SECTION	
NAME	Apex Stores, LLC
STREET	100 Main Street
CITY	Pawtucket
STATE	Rhode Island
ZIP/POSTAL CODE	02860
COUNTRY	United States
AUTHORIZED EMAIL COMMUNICATION	No
LEGAL ENTITY SECTION	
TYPE	LIMITED LIABILITY COMPANY
STATE/COUNTRY UNDER WHICH ORGANIZED	Rhode Island
GOODS AND/OR SERVICES SECTION	
INTERNATIONAL CLASS	035

DESCRIPTION	Promoting the goods and services of others by placing advertisements and promotional displays in an electronic site accessed through computer networks; providing an on-line advertising guide featuring the goods and services of others; electronic retailing services and ordering services via computer featuring a wide variety of merchandise; Retail store and mail order services, featuring, a wide variety of merchandise; arranging for others the repair, service and replacement of a wide variety of general merchandise and vehicles; retail automobile parts and accessories stores; retail store services featuring customer pick-up and/or payment of newly purchased or repaired merchandise; pick up and delivery services; legal, business, advertising, marketing and management consulting services; automobile repair and maintenance.
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 09/01/2002
FIRST USE IN COMMERCE DATE	At least as early as 09/01/2002
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT4\IMAGEOUT4\789\280\78928022.xml1\AP P0003.JPG
SPECIMEN DESCRIPTION	promotional web site describing the services and bearing the mark
ADDITIONAL STATEMENTS SECTION	
PRIOR REGISTRATION(S)	Applicant claims ownership of U.S. Registration Number(s) 2443933 and 2918976.
SIGNATURE SECTION	
SIGNATURE	/John E. Ottaviani/
SIGNATORY NAME	John E. Ottaviani
SIGNATORY DATE	07/12/2006
SIGNATORY POSITION	Attorney for Applicant
PAYMENT SECTION	
NUMBER OF CLASSES	1
NUMBER OF CLASSES PAID	1
SUBTOTAL AMOUNT	325
TOTAL AMOUNT	325
PAYMENT METHOD	CC

ATTORNEY	
NAME	John E. Ottaviani
FIRM NAME	Edwards Angell Palmer & Dodge LLP
STREET	P.O. Box 55874
CITY	Boston
STATE	Massachusetts
ZIP/POSTAL CODE	02205
COUNTRY	United States
PHONE	401-274-9200
EMAIL	trademark@eapdlaw.com
AUTHORIZED EMAIL COMMUNICATION	Yes
ATTORNEY DOCKET NUMBER	42707/65893
OTHER APPOINTED ATTORNEY(S)	David G. Conlin; George W. Neuner; Linda M. Buckley; Peter F. Corless; Peter J. Manus; Lisa Swiszc Hazzard; Christine C. O'Day; Kathleen B. Carr; Steven M. Jensen; Peter J. Manso; John B. Alexander; Kathryn A. Piffat; William J. Daley, Jr.; David A. Tucker; John J. Penny, Jr.; Howard M. Gitten; Gregory B. Butler; Barry Kramer; Scott F. Wofsy; George N. Chaclos, David J. Silvia; Stephana E. Patton; Jeffrey D. Hsi; Margaret J. McLaren; Mark Russett; Amy Leahy; Robert J. Tosti; Brian M. Gaff; Carrie Webb-Olson; Kathryn Grant Belleau; F. Andrew Anderson and Patrick J. Concannon
CORRESPONDENCE SECTION	
NAME	John E. Ottaviani
FIRM NAME	Edwards Angell Palmer & Dodge LLP
STREET	P.O. Box 55874
CITY	Boston
STATE	Massachusetts
ZIP/POSTAL CODE	02205
COUNTRY	United States
PHONE	401-274-9200
EMAIL	trademark@eapdlaw.com
AUTHORIZED EMAIL COMMUNICATION	Yes

FILING INFORMATION

SUBMIT DATE	Wed Jul 12 16:23:51 EDT 2006
TEAS STAMP	USPTO/BAS-6622883210-2006 0712162351058075-78928022 -200b4528491be59e02a3c4a3 46158a38b46-CC-387-200607 12162231968773

PTO Form 1478 (Rev 6/2005)

OMB No. 0651-0009 (Exp xx/xx/xxxx)

Trademark/Service Mark Application, Principal Register

Serial Number: 78928022

Filing Date: 07/12/2006

To the Commissioner for Trademarks:

MARK: (Standard Characters, see mark)

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The literal element of the mark consists of APEX COMPANIES.

The applicant, Apex Stores, LLC, a limited liability company organized under the laws of Rhode Island, residing at 100 Main Street, Pawtucket, Rhode Island, United States, 02860, requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

The applicant, or the applicant's related company or licensee, is using the mark in commerce, and lists below the dates of use by the applicant, or the applicant's related company, licensee, or predecessor in interest, of the mark on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

International Class 035: Promoting the goods and services of others by placing advertisements and promotional displays in an electronic site accessed through computer networks; providing an on-line advertising guide featuring the goods and services of others; electronic retailing services and ordering services via computer featuring a wide variety of merchandise; Retail store and mail order services, featuring, a wide variety of merchandise; arranging for others the repair, service and replacement of a wide variety of general merchandise and vehicles; retail automobile parts and accessories stores; retail store services featuring customer pick-up and/or payment of newly purchased or repaired merchandise; pick up and delivery services; legal, business, advertising, marketing and management consulting services; automobile repair and maintenance.

In International Class 035, the mark was first used at least as early as 09/01/2002, and first used in commerce at least as early as 09/01/2002, and is now in use in such commerce. The applicant is submitting or will submit one specimen for *each class* showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) promotional web site describing the services and bearing the mark.

Specimen - 1

Applicant claims ownership of U.S. Registration Number(s) 2443933 and 2918976.

The applicant hereby appoints John E. Ottaviani and David G. Conlin; George W. Neuner; Linda M. Buckley; Peter F. Corless; Peter J. Manus; Lisa Swiszczy Hazzard; Christine C. O'Day; Kathleen B. Carr; Steven M. Jensen; Peter J. Manso; John B. Alexander; Kathryn A. Piffat; William J. Daley, Jr.; David A. Tucker; John J. Penny, Jr.; Howard M. Gitten; Gregory B. Butler; Barry Kramer; Scott F. Wofsy; George N. Chaclas, David J. Silvia; Stephana E. Patton; Jeffrey D. Hsi; Margaret J. McLaren; Mark Russett; Amy Leahy; Robert J. Tosti; Brian M. Gaff; Carrie Webb-Olson; Kathryn Grant Belleau; F. Andrew Anderson and Patrick J. Concannon of Edwards Angell Palmer & Dodge LLP, P.O. Box 55874, Boston, Massachusetts, United States,

02205 to submit this application on behalf of the applicant. The attorney docket/reference number is 42707/65893.

The USPTO is authorized to communicate with the applicant or its representative at the following email address: trademark@eapdlaw.com.

A fee payment in the amount of \$325 will be submitted with the application, representing payment for 1 class (es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /John E. Ottaviani/ Date: 07/12/2006

Signatory's Name: John E. Ottaviani

Signatory's Position: Attorney for Applicant

Mailing Address:

John E. Ottaviani

P.O. Box 55874

Boston, Massachusetts 02205

RAM Sale Number: 387

RAM Accounting Date: 07/13/2006

Serial Number: 78928022

Internet Transmission Date: Wed Jul 12 16:23:51 EDT 2006

TEAS Stamp: USPTO/BAS-6622883210-2006071216235105807

5-78928022-200b4528491be59e02a3c4a346158

a38b46-CC-387-20060712162231968773

[TDR Home](#)

This document may be displayed as a PDF file containing images without text. You may view online or save the entire document by clicking on the file download icon in the upper right corner of this page. [[required PDF viewer](#)]

[FAQ: Are you seeing only the first page of this PDF document?](#)

If you need help:

http://tmportal.uspto.gov/external/PA_1_0_LT/OpenServletWindow?serialNumber=78928022&sc... 8/19/2008

- **General trademark information:** Please e-mail TrademarkAssistanceCenter@uspto.gov, or telephone either 571-272-9250 or 1-800-786-9199.
- **Technical help:** For instructions on how to use TDR, or help in resolving **technical** glitches, please e-mail TDR@uspto.gov. If outside of the normal business hours of the USPTO, please e-mail [Electronic Business Support](#), or call 1-800-786-9199.
- **Questions about USPTO programs:** Please e-mail [USPTO Contact Center \(UCC\)](#).

NOTE: Within any e-mail, please include your telephone number so we can talk to you directly, if necessary. Also, include the relevant serial number or registration number, if existing.

EXHIBIT D

Document Description: **Application**Mail / Create Date: **12-Jul-2006**[Previous Page](#)[Next Page](#)You are currently on page **1** of **3**

PTO Form 1478 (Rev 6/2005)

OMB No. 0651-0009 (Exp xx/xx/xxxx)

Trademark/Service Mark Application, Principal Register

Serial Number: 78928010**Filing Date: 07/12/2006**

The table below presents the data as entered.

Input Field	Entered
MARK SECTION	
MARK	<u>APEX COMPANIES</u>
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	APEX COMPANIES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
OWNER SECTION	
NAME	Apex Stores, LLC
STREET	100 Main Street
CITY	Pawtucket
STATE	
ZIP/POSTAL CODE	02860
COUNTRY	United States
AUTHORIZED EMAIL COMMUNICATION	No
LEGAL ENTITY SECTION	
TYPE	LIMITED LIABILITY COMPANY
STATE/COUNTRY UNDER WHICH ORGANIZED	Rhode Island
GOODS AND/OR SERVICES SECTION	
INTERNATIONAL CLASS	042

DESCRIPTION	Computer services, namely, creating indexes of information, sites, and other resources available on computer networks; computer services, namely, providing search engines for obtaining data on a global computer network
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 09/01/2002
FIRST USE IN COMMERCE DATE	At least as early as 09/01/2002
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT4\IMAGEOUT4\789\280\78928010\xml1\AP P0003.JPG
SPECIMEN DESCRIPTION	promotional web page describing the services and bearing the mark
ADDITIONAL STATEMENTS SECTION	
PRIOR REGISTRATION(S)	Applicant claims ownership of U.S. Registration Number(s) 2443933 and 2918976.
SIGNATURE SECTION	
SIGNATURE	/John E. Ottaviani/
SIGNATORY NAME	John E. Ottaviani
SIGNATORY DATE	07/12/2006
SIGNATORY POSITION	Attorney for Applicant
PAYMENT SECTION	
NUMBER OF CLASSES	1
NUMBER OF CLASSES PAID	1
SUBTOTAL AMOUNT	325
TOTAL AMOUNT	325
PAYMENT METHOD	CC
ATTORNEY	
NAME	John E. Ottaviani
FIRM NAME	Edwards Angell Palmer & Dodge LLP
STREET	P.O. Box 55874
CITY	Boston
STATE	Massachusetts
ZIP/POSTAL CODE	02205
COUNTRY	United States
PHONE	401-274-9200

EMAIL	trademark@capdlaw.com
AUTHORIZED EMAIL COMMUNICATION	Yes
ATTORNEY DOCKET NUMBER	42707/65893-4
OTHER APPOINTED ATTORNEY(S)	David G. Conlin; George W. Neuner; Linda M. Buckley; Peter F. Corless; Peter J. Manus; Lisa Swiszc Hazzard; Christine C. O'Day; Kathleen B. Carr; Steven M. Jensen; Peter J. Manso; John B. Alexander; Kathryn A. Piffat; William J. Daley, Jr.; David A. Tucker; John J. Penny, Jr.; Howard M. Gitten; Gregory B. Butler; Barry Kramer; Scott F. Wofsy; George N. Chaclos, David J. Silvia; Stephana E. Patton; Jeffrey D. Hsi; Margaret J. McLaren; Mark Russett; Amy Leahy; Robert J. Tosti; Brian M. Gaff; Carrie Webb-Olson; Kathryn Grant Belleau; F. Andrew Anderson and Patrick J. Concannon
CORRESPONDENCE SECTION	
NAME	John E. Ottaviani
FIRM NAME	Edwards Angell Palmer & Dodge LLP
STREET	P.O. Box 55874
CITY	Boston
STATE	Massachusetts
ZIP/POSTAL CODE	02205
COUNTRY	United States
PHONE	401-274-9200
EMAIL	trademark@capdlaw.com
AUTHORIZED EMAIL COMMUNICATION	Yes
FILING INFORMATION	
SUBMIT DATE	Wed Jul 12 16:16:17 EDT 2006
TEAS STAMP	USPTO/BAS-6622883210-2006 0712161617707283-78928010 -200f7976153e875e66d1628e 254f3966ee5-CC-355-200607 12161452882723

PTO Form 1478 (Rev 6/2005)

OMB No. 0651-0009 (Exp xx/xx/xxxx)

Trademark/Service Mark Application, Principal Register

Serial Number: 78928010

Filing Date: 07/12/2006

To the Commissioner for Trademarks:

MARK: (Standard Characters, see mark)

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The literal element of the mark consists of APEX COMPANIES.

The applicant, Apex Stores, LLC, a limited liability company organized under the laws of Rhode Island, residing at 100 Main Street, Pawtucket, , United States, 02860, requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

The applicant, or the applicant's related company or licensee, is using the mark in commerce, and lists below the dates of use by the applicant, or the applicant's related company, licensee, or predecessor in interest, of the mark on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

International Class 042: Computer services, namely, creating indexes of information, sites, and other resources available on computer networks; computer services, namely, providing search engines for obtaining data on a global computer network

In International Class 042, the mark was first used at least as early as 09/01/2002, and first used in commerce at least as early as 09/01/2002, and is now in use in such commerce. The applicant is submitting or will submit one specimen for *each class* showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) promotional web page describing the services and bearing the mark.

Specimen - 1

Applicant claims ownership of U.S. Registration Number(s) 2443933 and 2918976.

The applicant hereby appoints John E. Ottaviani and David G. Conlin; George W. Neuner; Linda M. Buckley; Peter F. Corless; Peter J. Manus; Lisa Swiszc Hazzard; Christine C. O'Day; Kathleen B. Carr; Steven M. Jensen; Peter J. Manso; John B. Alexander; Kathryn A. Piffat; William J. Daley, Jr.; David A. Tucker; John J. Penny, Jr.; Howard M. Gitten; Gregory B. Butler; Barry Kramer; Scott F. Wofsy; George N. Chaclas, David J. Silvia; Stephana E. Patton; Jeffrey D. Hsi; Margaret J. McLaren; Mark Russett; Amy Leahy; Robert J. Tosti; Brian M. Gaff; Carrie Webb-Olson; Kathryn Grant Belleau; F. Andrew Anderson and Patrick J. Concannon of Edwards Angell Palmer & Dodge LLP, P.O. Box 55874, Boston, Massachusetts, United States, 02205 to submit this application on behalf of the applicant. The attorney docket/reference number is 42707/65893-4.

The USPTO is authorized to communicate with the applicant or its representative at the following email address: trademark@eapdlaw.com.

A fee payment in the amount of \$325 will be submitted with the application, representing payment for 1 class (es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /John E. Ottaviani/ Date: 07/12/2006

Signatory's Name: John E. Ottaviani

Signatory's Position: Attorney for Applicant

Mailing Address:

John E. Ottaviani

P.O. Box 55874

Boston, Massachusetts 02205

RAM Sale Number: 355

RAM Accounting Date: 07/13/2006

Serial Number: 78928010

Internet Transmission Date: Wed Jul 12 16:16:17 EDT 2006

TEAS Stamp: USPTO/BAS-6622883210-2006071216161770728

3-78928010-200f7976153e875e66d1628e254f3

966ee5-CC-355-20060712161452882723

TDR Home

This document may be displayed as a PDF file containing images without text. You may view online or save the entire document by clicking on the file download icon in the upper right corner of this page. [[required PDF viewer](#)]

[FAQ: Are you seeing only the first page of this PDF document?](#)

If you need help:

- **General trademark information:** Please e-mail TrademarkAssistanceCenter@uspto.gov, or telephone either 571-272-9250 or 1-800-786-9199.
- **Technical help:** For instructions on how to use TDR, or help in resolving **technical** glitches, please e-mail TDR@uspto.gov. If outside of the normal business hours of the USPTO, please e-mail [Electronic Business Support](#), or call 1-800-786-9199.

- **Questions about USPTO programs:** Please e-mail USPTO Contact Center (UCC).

NOTE: Within any e-mail, please include your telephone number so we can talk to you directly, if necessary. Also, include the relevant serial number or registration number, if existing.

EXHIBIT E

Combined Declaration of Use and Incontestability Under Sections 8 & 15

The table below presents the data as entered.

Input Field	Entered
REGISTRATION NUMBER	2562812
REGISTRATION DATE	04/23/2002
SERIAL NUMBER	75781411
MARK SECTION	
MARK	APEX ONLINE
OWNER SECTION (current)	
NAME	Apex Stores, LLC
STREET	100 Main Street
CITY	Pawtucket
STATE	Rhode Island
ZIP/POSTAL CODE	02860
COUNTRY	United States
ATTORNEY SECTION (current)	
NAME	Lawrence R. Robins
FIRM NAME	EDWARDS & ANGELL, LLP
STREET	PO BOX 55874
CITY	BOSTON
STATE	Massachusetts
POSTAL CODE	02205
COUNTRY	United States
PHONE	401-274-9200
FAX	401-276-6611
EMAIL	TRADEMARK@EDWARDSANGELL.COM
ATTORNEY SECTION(proposed)	
NAME	John E. Ottaviani
FIRM NAME	Edwards Angell Palmer & Dodge LLP
INTERNAL ADDRESS	P.O. Box 130
STREET	F.D.R. Station
CITY	New York
STATE	New York
POSTAL CODE	10150
COUNTRY	United States
PHONE	401-274-9200
FAX	401-276-6611
EMAIL	TRADEMARK@EAPDLAW.COM
AUTHORIZED TO COMMUNICATE VIA E-MAIL	Yes
ATTORNEY DOCKET NUMBER	301900/59529

OTHER APPOINTED ATTORNEY	David G. Conlin; George W. Neuner; Linda M. Buckley; Peter F. Corless; Peter J. Manus; Lisa Swiszc Hazzard; Christine C. O'Day; Kathleen B. Carr; Steven M. Jensen; Peter J. Manso; Kathryn A. Piffat; William J. Daley, Jr.; David A. Tucker; John J. Penny, Jr.; Howard M. Gitten; Gregory B. Butler; Barry Kramer; Scott F. Wofsy; George N. Chacclas; David J. Silvia; Stephana E. Patton; Jeffrey D. Hsi; Margaret J. McLaren; Mark Russett; Brian M. Gaff; Carrie Webb Olson; Kathryn Grant Belleau; F. Andrew Anderson; Patrick J. Concannon; Maria A. Scungio; Andrew T. O'Connor; Jacob G. Weintraub; Peter C. Schechter; Melissa Mendelsohn; YeWon Min; David I. Greenbaum; David Weild III; Andrea J. Mealey and Michael Rizzo
---------------------------------	---

GOODS AND/OR SERVICES SECTION

INTERNATIONAL CLASS	035
GOODS OR SERVICES	KEEP ALL LISTED
SPECIMEN FILE NAME(S)	\\TICRS2\EXPORT13\757\814\75781411\xml\8150002.JP G
SPECIMEN DESCRIPTION	web page describing the services and bearing the mark

ATTORNEY SECTION (current)

NAME	Lawrence R. Robins
FIRM NAME	EDWARDS & ANGELL, LLP
STREET	PO BOX 55874
CITY	BOSTON
STATE	Massachusetts
POSTAL CODE	02205
COUNTRY	United States
PHONE	401-274-9200
FAX	401-276-6611
EMAIL	TRADEMARK@EDWARDSANGELL.COM

ATTORNEY SECTION(proposed)

NAME	John E. Ottaviani
FIRM NAME	Edwards Angell Palmer & Dodge LLP
INTERNAL ADDRESS	P.O. Box 130
STREET	F.D.R. Station
CITY	New York
STATE	New York
POSTAL CODE	10150
COUNTRY	United States
PHONE	401-274-9200
FAX	401-276-6611
EMAIL	TRADEMARK@EAPDLAW.COM
AUTHORIZED TO COMMUNICATE VIA E-MAIL	Yes
ATTORNEY DOCKET NUMBER	301900/59529

OTHER APPOINTED ATTORNEY	David G. Conlin; George W. Neuner; Linda M. Buckley; Peter F. Corless; Peter J. Manus; Lisa Swiszc Hazzard; Christine C. O'Day; Kathleen B. Carr; Steven M. Jensen; Peter J. Manso; Kathryn A. Piffat; William J. Daley, Jr.; David A. Tucker; John J. Penny, Jr.; Howard M. Gitten; Gregory B. Butler; Barry Kramer; Scott F. Wofsy; George N. Chacclas; David J. Silvia; Stephana E. Patton; Jeffrey D. Hsi; Margaret J. McLaren; Mark Russett; Brian M. Gaff; Carrie Webb Olson; Kathryn Grant Belleau; F. Andrew Anderson; Patrick J. Concannon; Maria A. Scungio; Andrew T. O'Connor; Jacob G. Weintraub; Peter C. Schechter; Melissa Mendelsohn;
---------------------------------	--

YeWon Min; David I. Greenbaum; David Weild III; Andrea J. Mealey and Michael Rizzo

PAYMENT SECTION	
NUMBER OF CLASSES	1
NUMBER OF CLASSES PAID	1
SUBTOTAL AMOUNT	300
TOTAL FEE PAID	300
SIGNATURE SECTION	
SIGNATURE	/Andrew A. Gates/
SIGNATORY'S NAME	Andrew A. Gates
SIGNATORY'S POSITION	Manager
DATE SIGNED	08/28/2007
PAYMENT METHOD	DA
FILING INFORMATION	
SUBMIT DATE	Tue Aug 28 15:44:31 EDT 2007
TEAS STAMP	USPTO/S08N15-38.112.153.1 90-20070828154431958069-2 562812-3801b458b62eda9385 dcc29909ae06467-DA-868-20 070828154146211093

PTO Form 1583 (Rev 5/2006)
OMB No. 0651-0055 (Exp 10-31-2008)

Combined Declaration of Use and Incontestability Under Sections 8 & 15

To the Commissioner for Trademarks:

REGISTRATION NUMBER: 2562812

REGISTRATION DATE: 04/23/2002

MARK: APEX ONLINE

The owner, Apex Stores, LLC, having an address of 100 Main Street, Pawtucket, Rhode Island, United States 02860, is filing a Combined Declaration of Use and Incontestability Under Sections 8 & 15.

For International Class 035, the mark is in use in commerce on or in connection with **all** of the goods or services listed in the existing registration for this specific class; **and** the mark has been continuously used in commerce for five (5) consecutive years after the date of registration, or the date of publication under Section 12(c), and is still in use in commerce on or in connection with **all** goods or services listed in the existing registration for this class. Also, no final decision adverse to the owner's claim of ownership of such mark for those goods or services exists, or to the owner's right to register the same or to keep the same on the register; and, no proceeding involving said rights pending and not disposed of in either the U.S. Patent and Trademark Office or the courts exists.

The owner is submitting one specimen for this class showing the mark as used in commerce on or in connection with any item in this class, consisting of a(n) web page describing the services and bearing the mark.

Specimen File1

The registrant hereby appoints John E. Ottaviani and David G. Conlin; George W. Neuner; Linda M. Buckley; Peter F. Corless; Peter J. Manus; Lisa Swiszc Hazzard; Christine C. O'Day; Kathleen B. Carr; Steven M. Jensen; Peter J. Manso; Kathryn A. Piffat; William J. Daley, Jr.; David A. Tucker; John J. Penny, Jr.; Howard M. Gitten; Gregory B. Butler; Barry Kramer; Scott F. Wofsy; George N. Chacelas; David J. Silvia; Stephana E. Patton; Jeffrey D. Hsi; Margaret J. McLaren; Mark Russett; Brian M. Gaff; Carrie Webb Olson; Kathryn Grant Belleau; F. Andrew Anderson; Patrick J. Concannon; Maria A. Scungio; Andrew T. O'Connor; Jacob G. Weintraub; Peter C. Schechter; Melissa Mendelsohn; YeWon Min; David I. Greenbaum; David Weild III; Andrea J. Mealey and Michael Rizzo of Edwards Angell Palmer & Dodge LLP, F.D.R. Station, P.O. Box 130, New York, New York United States 10150 to file this Combined Declaration of Use and Incontestability Under Sections 8 & 15 on behalf of the registrant. The attorney docket/reference number is 301900/59529.

A fee payment in the amount of \$300 will be submitted with the form, representing payment for 1 class(es), plus any additional grace period fee, if necessary.

Declaration

The owner, or its related company, is using the mark in commerce on or in connection with the goods and/or services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce. The owner, or its related company, has continuously used the mark in commerce on or in connection with the goods and/or services identified above, for five (5) consecutive years after the date of registration, or the date of publication under Section 12(c), and is still using the mark in commerce on or in connection with the identified goods and/or services. There has been no final decision adverse to the owner's claim of ownership of such mark for such goods and/or services, or to the owner's right to register the same or to keep the same on the register; and there is no proceeding involving said rights pending and not disposed of either in the U.S. Patent and Trademark Office or in the courts.

The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the Owner; and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

Signature: /Andrew A. Gates/ Date: 08/28/2007

Signatory's Name: Andrew A. Gates

Signatory's Position: Manager

Mailing Address:

EDWARDS & ANGELL, LLP
PO BOX 55874
BOSTON, Massachusetts 02205

Mailing Address:

Edwards Angell Palmer & Dodge LLP
F.D.R. Station
New York, New York 10150

Serial Number: 75781411

Internet Transmission Date: Tue Aug 28 15:44:31 EDT 2007

TEAS Stamp: USPTO/S08N15-38.112.153.190-200708281544

31958069-2562812-3801b458b62eda9385dcc29

909ae06467-DA-868-20070828154146211093

http://www.apexstores.com/

apexstores.com Apex.

Bed & Bath
Kitchen
Garden & Patio
Living Room
Collectible/Coin & Billa
Sporting Goods & Fitness
Automotive
FAQ's

Privacy Policy
Help
Info
Show Order
Email

Large Dial Fitness Scale, White or Black, by Sokee
\$34.99

Linking Popover Pan by Norpro
\$12.99

Personal Bag from, Calypso by Orlow
\$24.99

Redesigning Humidifier, by Luma R.R. Wilson
\$79.99

2-8 Cup Percolator Coffee Pot by Parkwood, Bittersweet
\$34.99

Set 4 Crystal Plates by Litali Wormell
\$16.99

http://www.apexstores.com/ (3 of 7) 08/20/2007 1:04:10 PM

http://www.apexstores.com/

10 PC. Wok Set by Norpro
\$22.99

Rice Express by Krups
\$19.99

George Foreman Indoor/Outdoor Electric Barbecue 9.5lb by Salton
\$79.99

2 Piece Grind Set by Nicholson
\$11.99

Sporting Goods & Fitness

apex stores, is the online shopping site of **Apex**, the only site with everything for your home on one site.

Apex is a New England based retailer delivering the ultimate in brand name selection and unbeatable customer service. **Apex** has been providing over 80 years of award winning service to its customers. Every minute of those 80 years of experience has been incorporated into this site and the service behind it, to deliver the best possible **Apex Online** shopping experience! If you would like to see our award winning **Apex Express** no delivery service please call 1-800-450-Apex.

http://www.apexstores.com/ (2 of 7) 08/20/2007 1:04:10 PM

http://www.apexstores.com/

If you have any questions on any specific items, please feel free to e-mail us at info@apexstores.com anytime.

Or call us toll free at:

1-800-450-APEX(2739)

Monday-Friday 9 AM - 5 PM EST

Bed & Bath

Kitchen

Garden & Patio

Living Room

Collectible/Coin & Billa

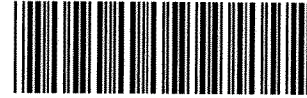
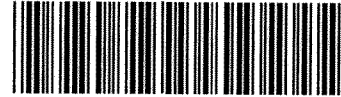
Sporting Goods & Fitness

Automotive

FAQ's

© copyright 1999-2007 Apex At Home, LLC. All rights reserved

http://www.apexstores.com/ (3 of 7) 08/20/2007 1:05:18 PM

ROUTING SHEET TO POST REGISTRATION (PRU)**Registration Number:** 2562812**Serial Number:** 75781411**RAM Sale Number:** 868**RAM Accounting Date:** 20070829**Total Fees:** \$300

Note: Process in accordance with Post Registration Standard Operating Procedure (SOP)

<u>Transaction</u>	<u>Fee Code</u>	<u>Transaction Date</u>	<u>Fee per Class</u>	<u>Number of Classes</u>	<u>Number of Classes Paid</u>	<u>Total Fee</u>
§8 affidavit	7205	20070828	\$100	1	1	\$100
§15 affidavit	7208	20070828	\$200	1	1	\$200

Physical Location: 900 - FILE REPOSITORY (FRANCONIA)

Lost Case Flag: False

In TICRS (AM-FLG-IN-TICRS): True

Transaction Date: 20070828

EXHIBIT F

Combined Declaration of Use and Incontestability Under Sections 8 & 15

The table below presents the data as entered.

Input Field	Entered
REGISTRATION NUMBER	2443933
REGISTRATION DATE	04/17/2001
SERIAL NUMBER	75781412
MARK SECTION	
MARK	APEX STORES
OWNER SECTION (no change)	
ATTORNEY SECTION (current)	
NAME	Lawrence R. Robins
FIRM NAME	EDWARDS & ANGELL, LLP
STREET	PO BOX 55874
CITY	BOSTON
STATE	Massachusetts
ZIP/POSTAL CODE	02205
COUNTRY	United States
PHONE	401-274-9200
FAX	401-276-6611
EMAIL	TRADEMARK@EDWARDSANGELL.COM
ATTORNEY SECTION(proposed)	
NAME	John E. Ottaviani
FIRM NAME	Edwards Angell Palmer & Dodge LLP
INTERNAL ADDRESS	P.O. Box 130
STREET	F.D.R. Station
CITY	New York
STATE	New York
ZIP/POSTAL CODE	10150
COUNTRY	United States
PHONE	401-274-9200
FAX	401-276-6611
EMAIL	TRADEMARK@EAPDLAW.COM
AUTHORIZED TO COMMUNICATE VIA E-MAIL	Yes
DOCKET NUMBER	42707/59260
OTHER APPOINTED ATTORNEY(S)	David G. Conlin; George W. Neuner; Linda M. Buckley; Peter F. Corless; Peter J. Manus; Lisa Swiszc Hazzard; Christine C. O'Day; Kathleen B. Carr; Steven M. Jensen; Peter J. Manso; Kathryn A. Piffat; William J. Daley, Jr.; David A. Tucker; John J. Penny, Jr.; Howard M. Gitten; Gregory B. Butler; Barry Kramer; Scott F. Wofsy; George N. Chaclos, David J. Silvia; Stephana E. Patton; Jeffrey D. Hsi; Margaret J. McLaren; Mark Russett; Amy Leahy; Robert J. Tosti; Brian M. Gaff; Carrie Webb-Olson; Kathryn Grant Belleau; F. Andrew Anderson; Patrick J. Concannon; Maria A. Scungio; Andrew T. O'Connor; Daniel I. Ackerman; Jacob G. Weintraub and Peter C. Schechter

GOODS AND/OR SERVICES SECTION	
INTERNATIONAL CLASS	035
FILING COVERS ALL GOODS OR SERVICES IN THIS CLASS	YES
SPECIMEN FILE NAME(S)	\\TICRS2\EXPORT12\757\814 \75781412\xml1\8150002.JP G
SPECIMEN DESCRIPTION	web page describing the services and bearing the mark
PAYMENT SECTION	
NUMBER OF CLASSES	1
NUMBER OF CLASSES PAID	1
SUBTOTAL AMOUNT	300
TOTAL AMOUNT	300
SIGNATURE SECTION	
SIGNATURE	/Andrew A. Gates/
SIGNATORY'S NAME	Andrew A. Gates
SIGNATORY'S POSITION	Manager
DATE SIGNED	04/17/2007
PAYMENT METHOD	DA
FILING INFORMATION	
SUBMIT DATE	Tue Apr 17 16:38:41 EDT 2007
TEAS STAMP	USPTO/S08N15-38.112.153.1 90-20070417163841256576-2 443933-370b99050d788ebca9 8aea8e456f279af6-DA-493-2 0070417163451383546

PTO Form 1583 (Rev 5/2006)
OMB No. 0551-0055 (Exp 10/31/2009)

Combined Declaration of Use and Incontestability Under Sections 8 & 15

To the Commissioner for Trademarks:

REGISTRATION NUMBER: 2443933

REGISTRATION DATE: 04/17/2001

MARK: APEX STORES

The owner, Apex Stores, LLC, having an address of 100 Main Street, Pawtucket, Rhode Island US 02860, is filing a Combined Declaration of Use and Incontestability Under Sections 8 & 15.

For International Class 035, the owner, or its related company, is using the mark in commerce on or in connection with **all** goods or services listed in the existing registration for this class; and, the owner, or its related company, has continuously used the mark in commerce for five (5) consecutive years after the date of registration, or the date of publication under Section 12(c), and is still using the mark in commerce on or in connection with **all** goods or services listed in the existing registration for this class. Also, there has been no final decision adverse to the owner's claim of ownership of such mark for those goods or services, or to the owner's right to register the same or to keep the same on the register; and, there is no proceeding involving said rights pending and not disposed of in either the U.S. Patent and Trademark Office or the courts.

The owner is submitting one specimen for this class showing the mark as used in commerce on or in connection with any item in this class, consisting of a(n) web page describing the services and bearing the mark.

Specimen-1

The registrant hereby appoints John E. Ottaviani and David G. Conlin; George W. Neuner; Linda M. Buckley; Peter F. Corless; Peter J. Manus; Lisa Swiszc Hazzard; Christine C. O'Day; Kathleen B. Carr; Steven M. Jensen; Peter J. Manso; Kathryn A. Piffat; William J. Daley, Jr.; David A. Tucker; John J. Penny, Jr.; Howard M. Gitten; Gregory B. Butler; Barry Kramer; Scott F. Wofsy; George N. Chaclas, David J. Silvia;

Stephana E. Patton, Jeffrey D. Hsi, Margaret J. McLaren, Mark Russett, Amy Leahy, Robert J. Tosti, Brian M. Gaff, Carrie Webb-Olson, Kathryn Grant Belleau, F. Andrew Anderson, Patrick J. Concannon, Maria A. Scungio, Andrew T. O'Connor, Daniel I. Ackerman, Jacob G. Weintraub and Peter C. Schechter of Edwards Angell Palmer & Dodge LLP, P.O. Box 130, F.D.R. Station, New York, New York United States 10150 to file this Combined Declaration of Use and Incontestability Under Sections 8 & 15 on behalf of the registrant. The attorney docket/reference number is 42707/59260.

A fee payment in the amount of \$300 will be submitted with the form, representing payment for 1 class(es), plus any additional grace period fee, if necessary.

Declaration

The owner, or its related company, is using the mark in commerce on or in connection with the goods and/or services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce. The owner, or its related company, has continuously used the mark in commerce on or in connection with the goods and/or services identified above, for five (5) consecutive years after the date of registration, or the date of publication under Section 12(c), and is still using the mark in commerce on or in connection with the identified goods and/or services. There has been no final decision adverse to the owner's claim of ownership of such mark for such goods and/or services, or to the owner's right to register the same or to keep the same on the register; and there is no proceeding involving said rights pending and not disposed of either in the U.S. Patent and Trademark Office or in the courts.

The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the Owner; and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

Signature: /Andrew A. Gates/ Date: 04/17/2007

Signatory's Name: Andrew A. Gates

Signatory's Position: Manager

Mailing Address:

EDWARDS & ANGELL, LLP
PO BOX 55874
BOSTON, Massachusetts 02205

Mailing Address:

Edwards Angell Palmer & Dodge LLP
F.D.R. Station
New York, New York 10150

Serial Number: 75781412

Internet Transmission Date: Tue Apr 17 16:38:41 EDT 2007

TEAS Stamp: USPTO/S08N15-38.112.153.190-200704171638

41256576-2443933-370b99050d788ebca98aea8

e456f279af6-DA-493-20070417163451383546

apexstores.comSM

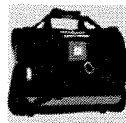
[Bed & Bath](#)
[Kitchen](#)
[Garden & Patio](#)
[Living Room](#)
[FAQ's](#)
[Collectibles/Coins & Bills](#)
[Privacy Policy](#)
[Help](#)
[Info](#)
[Show Order](#)
[Email](#)



**Large Dial Fitness Scale,
White or Black, by Salter**
\$34.99



**Linking Popover Pan by
Norpro**
\$12.99



**Personal Bag from
Calypso by Delsey**
\$34.99



**Recirculating Humidifier
by Lasko 9.0 gallon**
\$79.99



**2-8 Cup Percolator/Coffee
Pot by Farberware
Millennium**
\$34.99



**Set 4 Crystal Flutes by
Luigi Bormioli**
\$18.99



10 P.C. Wok Set by Norpro
\$32.99



Egg Express by Krups
\$19.99



**George Foreman
Indoor/Outdoor Electric
Barbecue Grill by Salton**
\$79.99



**2 Piece Cruet Set by
Michelangelo**
\$11.99

apexstores.com, is the online shopping site of Apex, the only site with everything for your home *on one site*.

Apex is a New England based retailer delivering the ultimate in brand name selection and unbeatable customer service. Apex has been providing over 78 years of award winning service to it's customers. Every minute of that 78 years of experience has been incorporated into this site and the service behind it, to deliver the best possible Apex Online® shopping experience! If you would like to use our award winning Apexexpress delivery service please call 1-800-450-Apex.

If you have any questions on any specific items, please feel free to e-mail us at info@apexstores.com anytime.

Or call us toll free at

1-800-450-APEX(2739)

Monday-Friday 9 AM - 5 PM EST

Bed & Bath

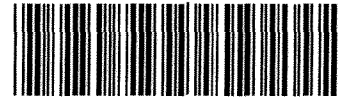
Kitchen

Garden & Patio

Living Room

FAQ's

Collectibles/Coins & Bills

ROUTING SHEET TO POST REGISTRATION (PRU)**Registration Number:** 2443933**Serial Number:** 75781412**RAM Sale Number:** 493**RAM Accounting Date:** 20070418**Total Fees:** \$300

Note: Process in accordance with Post Registration Standard Operating Procedure (SOP)

<u>Transaction</u>	<u>Fee Code</u>	<u>Transaction Date</u>	<u>Fee per Class</u>	<u>Number of Classes</u>	<u>Number of Classes Paid</u>	<u>Total Fee</u>
§8 affidavit	7205	20070417	\$100	1	1	\$100
§15 affidavit	7208	20070417	\$200	1	1	\$200

Physical Location: 900 - FILE REPOSITORY (FRANCONIA)

Lost Case Flag: False

In TICRS (AM-FLG-IN-TICRS): True

Transaction Date: 20070417

EXHIBIT G

**Combined Declaration of Use In Commerce & Application For Renewal of Registration of
A Mark Under Sections 8 & 9**

The table below presents the data as entered.

Input Field	Entered
REGISTRATION NUMBER	1847961
REGISTRATION DATE	08/02/1994
SERIAL NUMBER	74430251
MARK SECTION	
MARK	APEX
OWNER SECTION (no change)	
ATTORNEY SECTION	
NAME	JOHN E. OTTAVIANI, ESQ.
FIRM NAME	Edwards & Angell, LLP
STREET	PO BOX 55874
CITY	BOSTON
STATE	MA
ZIP/POSTAL CODE	02205
COUNTRY	USA
PHONE	401-274-9200
FAX	401-276-6611
EMAIL	trademark@edwardsangell.com
AUTHORIZED TO COMMUNICATE VIA E-MAIL	Yes
DOCKET NUMBERS	42707/59263
OTHER APPOINTED ATTORNEY(S)	Barbara S. Kitchell; Barry Kramer; Carrie Webb Olson; Christine C. O'Day; David A. Tucker; David G. Conlin; David J. Silvia; Douglas G. Gray; George Chaclas; George W. Hartnell, III; George W. Neuner; Gregory B. Butler; Howard M. Gitten; J. Mark Konieczny; Jennifer K. Rosenfield; John B. Alexander; John E. Ottaviani; John J. Penny, Jr.; Jun Umemuro; Kathleen B. Carr; Kathryn A. Piffat; Kelly L. Williams; Linda M. Buckley; Lisa Swiszc Hazzard; Peter C. Lauro; Peter F. Corless; Peter J. Manso; Peter J. Manus; Richard H. Newman; Richard J. Roos; Robert L. Buchanan; Scott D. Wofsy; Steven M. Jensen; William J. Daley, Jr.
GOODS AND/OR SERVICES SECTION	
INTERNATIONAL CLASS	042
KEEP EXISTING GOODS AND/OR SERVICES	YES
SPECIMEN FILE NAME(S)	\\ticters\EXPORT10\IMAGEOUT 10\744\302\74430251\xml1\ S890002.JPG
	\\ticters\EXPORT10\IMAGEOUT 10\744\302\74430251\xml1\ S890003.JPG
SPECIMEN DESCRIPTION	advertisements
PAYMENT SECTION	
NUMBER OF CLASSES	1
NUMBER OF CLASSES PAID	1
SUBTOTAL AMOUNT	500
TOTAL AMOUNT	500

SIGNATURE SECTION	
SIGNATURE	/John E. Ottaviani/
SIGNATORY NAME	John E. Ottaviani
SIGNATORY DATE	07/22/2004
SIGNATORY POSITION	Attorney
FILING INFORMATION	
SUBMIT DATE	Thu Jul 22 17:05:54 EDT 2004
TEAS STAMP	USPTO/S08N09-641722634-20 040722170554708058-184796 1-200ad7b27eed073bc83324c 114edd2b-DA-322-200407221 70441001326

PTO Form 1983 (Rev 5/2006)
OMB No. 5051-0055 (Exp 10/31/2006)

Combined Declaration of Use In Commerce & Application For Renewal of Registration of A Mark Under Sections 8 & 9

To the Commissioner for Trademarks:

REGISTRATION NUMBER: 1847961

REGISTRATION DATE: 08/02/1994

MARK: APEX

The owner, APEX STORES, LLC, residing at 100 MAIN STREET, PAWTUCKET, RI US 02860, is using the mark in commerce on or in connection with the goods and /or services as follows:

For International Class 042, the owner is using or is using through a related company or licensee the mark in commerce on or in connection with all goods and/or services listed in the existing registration.

The owner is submitting one specimen for each class showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) advertisements.

Specimen-1

Specimen-2

The registrant hereby appoints JOHN E. OTTAVIANI, ESQ. and Barbara S. Kitchell; Barry Kramer; Carrie Webb Olson; Christine C. O'Day; David A. Tucker; David G. Conlin; David J. Silvia; Douglas G. Gray; George Chaclos; George W. Hartnell, III; George W. Neuner; Gregory B. Butler; Howard M. Gitten; J. Mark Konieczny; Jennifer K. Rosenfield; John B. Alexander; John E. Ottaviani; John J. Penny, Jr.; Jun Umemuro; Kathleen B. Carr; Kathryn A. Piffat; Kelly L. Williams; Linda M. Buckley; Lisa Swiszc Hazzard; Peter C. Lauro; Peter F. Corless; Peter J. Manso; Peter J. Manus; Richard H. Newman; Richard J. Roos; Robert L. Buchanan; Scott D. Wofsy; Steven M. Jensen; William J. Daley, Jr. of Edwards & Angell, LLP, PO BOX 55874, BOSTON, MA USA 02205 to submit this Combined Declaration of Use In Commerce & Application For Renewal of Registration of A Mark Under Sections 8 & 9 on behalf of the registrant. The attorney docket/reference number is 42707/59263.

A fee payment in the amount of \$500 will be submitted with the form, representing payment for 1 class(es), plus any additional grace period fee, if necessary.

Declaration

Section 8: Declaration of Use in Commerce

The owner is using or is using through a related company or licensee the mark in commerce on or in connection with the goods/services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce.

Section 9: Application for Renewal

The registrant requests that the registration be renewed for the goods and/or services identified above.

The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the Owner; and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

Signature: /John E. Ottaviani/ Date: 07/22/2004

Signatory's Name: John E. Ottaviani

Signatory's Position: Attorney

Mailing Address:

Edwards & Angell, LLP

PO BOX 55874

BOSTON, MA 02205

RAM Sale Number: 322

RAM Accounting Date: 07/23/2004

Serial Number: 74430251

Internet Transmission Date: Thu Jul 22 17:05:54 EDT 2004

TEAS Stamp: USPTO/S08N09-641722634-20040722170554708

058-1847961-200ad7b27eed073bc83324c114ed

d2b-DA-322-20040722170441001326

apex_journal_0423_04half 4/20/04 12:37 PM Page 1

Apex

IN PAWTUCKET

OPEN FRIDAY 10AM-8PM • SATURDAY 10AM-6PM
OPEN SUNDAYS 12NOON-5PM

EXTRA SAVINGS ON ALL APPAREL!



25% off
TICKETED PRICE
LADIES KNIT TEES
BY ERIKA
Large assortment of
colors & styles to
choose from.

25-50% off
TICKETED PRICE
ENTIRE STOCK OF ALFRED DUNNER
PETITE & MISSES

30% off
TICKETED PRICE
ALL HAGGAR FOR MEN
Pants & shirts

25% off
TICKETED PRICE
ALL SHORT SLEEVE KNIT SHIRTS FOR MEN

25-50% off
TICKETED PRICE
ALL LADIES HANDBAGS
POLICE WTA • HUSH PUPPIES • FRANKIE & SCHNEIDER

BONUS COUPONS!!
take an additional

20% off

any one apparel
item for the family

No adjustments on prior sales. With coupon only. Not
to be used in conjunction with other coupons, letters
or postcards. In store coupon only.
Expires 4/23/04. Apex.

BONUS COUPONS!!
take an additional

20% off

any one apparel
item for the family

No adjustments on prior sales. With coupon only. Not
to be used in conjunction with other coupons, letters
or postcards. In store coupon only.
Expires 4/23/04. Apex.

BONUS COUPONS!!
take an additional

20% off

any one apparel
item for the family

No adjustments on prior sales. With coupon only. Not
to be used in conjunction with other coupons, letters
or postcards. In store coupon only.
Expires 4/23/04. Apex.

BONUS COUPONS!!
take an additional

15% off

any one item
for the home!

No adjustments on prior sales. With coupon only.
Not to be used in conjunction with other coupons,
letters or postcards. In store
coupon only. Expires 4/23/04. Apex.

BONUS COUPONS!!
take an additional

15% off

any one item
for the home!

No adjustments on prior sales. With coupon only.
Not to be used in conjunction with other coupons,
letters or postcards. In store
coupon only. Expires 4/23/04. Apex.

REGULAR, ORIGINAL & IF PURCHASED SEPARATELY PRICES MAY REFLECT OFFERING PRICES ONLY. SAVINGS MAY NOT BE BASED ON ACTUAL SALES. We reserve the right to limit quantities. No adjustments on prior sales. PRICES IN EFFECT THRU APRIL 23, 2004. LIMITED TO IN-STOCK QUANTITIES. OFFER VALID AT HOME B.

HOURS: MONDAY — WEDNESDAY 10AM-6PM • THURSDAY & FRIDAY 10AM-8PM • SATURDAY 10AM-6PM • SUNDAYS 12NOON-5PM

APRIL SAVINGS!

ALL FABERWARE OPEN STOCK 50% OFF

FABERWARE COOKWARE SETS
YOUR CHOICE

PLUS 15% off COUPON **139.99**

REG. \$199.99
10 PC. CLEAR VIEW
VINTAGE COOKWARE
SET BY FABERWARE
Includes 1.5 Qt. 2 Qt. & 3 Qt.
covered saucepan, 6 Qt. covered stockpot, 10" open fry
pan, & 4 Qt. steamer insert. Shown #70163

PLUS 15% off COUPON

REG. \$199.99
12 PC. COOKWARE
SET BY FABERWARE
CLASSIC SERIES
Includes a 3 pc. covered bowl set, 10" skillet, 1 Qt. &
2 Qt. covered straining saucepan, & 8 Qt. covered
straining stockpot. Shown #70756

YOUR CHOICE **22.49** PLUS 15% off COUPON

REG. \$29.99
ELECTRIC BRUNCH
PAN BY TOASTMASTER
Prepare food right at the table.
Nonstick. Shown #817

REG. \$44.99
EASY STORE HAND
MIXER BY OSTER
Exclusive burst of power, extra
power at the touch of a button.
Shown #2492 Black

60% off PLUS 15% off COUPON
ALL LUGGAGE & BACKPACKS
SAMSONITE • DELSEY • MONARCH • WILSON

ALL COFFEE MAKERS ON SALE

SALE **59.99** PLUS 15% off COUPON

REG. \$89.99
CLARITY 10 CUP COFFEE
MAKER BY MELITA
Pause & pour, hinged lid, stainless steel
boiler, brushed aluminum. Shown #HE5CT0

ALL FABERWARE COFFEE MAKERS ON SALE

SALE **44.99** PLUS 15% off COUPON

REG. \$59.99
10 CUP PERCOLATOR BY FABERWARE MILLENNIUM

SALE **52.49** PLUS 15% off COUPON

REG. \$69.99
12 CUP PERCOLATOR BY FABERWARE MILLENNIUM

SALE **59.99** PLUS 15% off COUPON

REG. \$79.99
12 CUP PERCOLATOR BY FABERWARE MILLENNIUM

ALL SMALL APPLIANCES ON SALE

SALE **21.99** PLUS 15% off COUPON

REG. \$36.99
4-SLICE TOASTER BY SUNBEAM
Extra wide slots, toast lift, cancel button. Shown #3835

SALE **10.39** PLUS 15% off COUPON

REG. \$12.99
2-SLICE TOASTER BY TOASTMASTER
Extra wide slots, electronic timer, auto high lift. Shown #T2000

SALE **29.99** PLUS 15% off COUPON

REG. \$59.99
16 PC. BEVERAGE SET BY TABLESCAPES
Eight 16 oz. Beverage
Pitch 15.25oz. 16oz. 15oz. 12oz. 8oz. 4oz.

FEE RECORD SHEET

Registration Number: 1847961

Serial Number: 74430251



RAM Sale Number: 322

Total Fees: \$500

RAM Accounting Date: 20040723

<u>Transaction</u>	<u>Fee Code</u>	<u>Transaction Date</u>	<u>Fee per Class</u>	<u>Number of Classes</u>	<u>Total Fee</u>
§8 affidavit	7205	20040722	\$100	1	\$100
Application for Renewal (§9)	7201	20040722	\$400	1	\$400

Transaction Date: 20040722



EXHIBIT H

Combined Declaration of Use and Incontestability Under Sections 8 & 15

The table below presents the data as entered.

Input Field	Entered
REGISTRATION NUMBER	2155905
REGISTRATION DATE	05/12/1998
SERIAL NUMBER	74529131
MARK SECTION	
MARK	APEX
OWNER SECTION (current)	
NAME	Apex Incorporated
STREET	100 Main Street
CITY	Pawtucket
STATE	RI
ZIP/POSTAL CODE	02860
COUNTRY	US
OWNER SECTION (proposed)	
NAME	APEX STORES, LLC
STREET	100 Main Street
CITY	Pawtucket
STATE	RI
ZIP/POSTAL CODE	02860
COUNTRY	US
ATTORNEY SECTION	
NAME	John E. Ottaviani, Esq.
FIRM NAME	Edwards & Angell, LLP
STREET	PO BOX 55874
CITY	BOSTON
STATE	MA
ZIP/POSTAL CODE	02205
COUNTRY	USA
PHONE	401-274-9200
FAX	401-276-6611
EMAIL	trademark@edwardsangell.com
AUTHORIZED TO COMMUNICATE VIA E-MAIL	Yes
DOCKET NUMBERS	42707/59255
OTHER APPOINTED ATTORNEY(S)	Barbara S. Kitchell; Barry Kramer; Carrie Webb Olson; Christine C. O'Day; David A. Tucker; David G. Conlin; David J. Silvia; Douglas G. Gray; George Chaclos; George W. Hartnell, III; George W. Neuner; Gregory B. Butler; Howard M. Gitten; J. Mark Konieczny; Jennifer K. Rosenfield; John B. Alexander; John J. Penny, Jr.; Jun Umemuro; Kathleen B. Carr; Kathryn A. Piffat; Kelly L. Williams; Linda M. Buckley; Lisa Swiszc Hazzard; Peter C. Lauro; Peter F. Corless; Peter J. Manso; Peter J. Manus; Richard H. Newman; Richard J. Roos; Robert L. Buchanan; Scott D. Wofsy; Steven M.

Jensen, William J. Daley, Jr.

GOODS AND/OR SERVICES SECTION	
INTERNATIONAL CLASS	037
KEEP EXISTING GOODS AND/OR SERVICES	YES
SPECIMEN FILE NAME(S)	\\ticters\EXPORT9\IMAGEOUT9\745\291\74529131\xml1\81 50002.JPG
SPECIMEN DESCRIPTION	advertisement
INTERNATIONAL CLASS	042
KEEP EXISTING GOODS AND/OR SERVICES	YES
SPECIMEN FILE NAME(S)	\\ticters\EXPORT9\IMAGEOUT9\745\291\74529131\xml1\81 50003.JPG
SPECIMEN DESCRIPTION	advertisement
PAYMENT SECTION	
NUMBER OF CLASSES	2
NUMBER OF CLASSES PAID	2
SUBTOTAL AMOUNT	600
TOTAL AMOUNT	600
SIGNATURE SECTION	
SIGNATURE	/John E. Ottaviani, Esq /
SIGNATORY NAME	John E. Ottaviani, Esq
SIGNATORY DATE	05/12/2004
SIGNATORY POSITION	Attorney
FILING INFORMATION	
SUBMIT DATE	Wed May 12 15:26:44 EDT 2004
TEAS STAMP	USPTO/S08N15-641722634-20 040512152644098070-215590 5-2002ff1a6631cb21d7771f8 fd6c692af4f-DA-109-200405 12145402605391

PTO Form 1583 (Rev 5/2006)
OMB No. 0551-0055 (Exp 10/31/2009)

Combined Declaration of Use and Incontestability Under Sections 8 & 15

To the Commissioner for Trademarks:

REGISTRATION NUMBER: 2155905

REGISTRATION DATE: 05/12/1998

MARK: APEX

The owner, APEX STORES, LLC, residing at 100 Main Street, Pawtucket, RI US 02860, is using the mark in commerce on or in connection with the goods and /or services as follows:

For International Class 037, the owner is using or is using through a related company or licensee the mark in commerce on or in connection with all goods and/or services listed in the existing registration.

The owner is submitting one specimen for each class showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) advertisement.

Specimen-1

For International Class 042, the owner is using or is using through a related company or licensee the mark in commerce on or in connection with all goods and/or services listed in the existing registration.

The owner is submitting one specimen for each class showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) advertisement.

Specimen-1

The registrant hereby appoints John E. Ottaviani, Esq. and Barbara S. Kitchell; Barry Kramer; Carrie Webb Olson; Christine C. O'Day; David A. Tucker; David G. Conlin; David J. Silvia; Douglas G. Gray; George Chaclos; George W. Hartnell, III; George W. Neuner; Gregory B. Butler; Howard M. Gitten; J. Mark Konieczny; Jennifer K. Rosenfield; John B. Alexander; John J. Penny, Jr.; Jun Umemuro; Kathleen B. Carr; Kathryn A. Piffat; Kelly L. Williams; Linda M. Buckley; Lisa Swiszc Hazzard; Peter C. Lauro; Peter F. Corless; Peter J. Manso; Peter J. Manus; Richard H. Newman; Richard J. Roos; Robert L. Buchanan; Scott D. Wofsy; Steven M. Jensen; William J. Daley, Jr. of Edwards & Angell, LLP, PO BOX 55874, BOSTON, MA USA 02205 to submit this Combined Declaration of Use and Incontestability Under Sections 8 & 15 on behalf of the registrant. The attorney docket/reference number is 42707/59255.

A fee payment in the amount of \$600 will be submitted with the form, representing payment for 2 class(es), plus any additional grace period fee, if necessary.

Declaration

The owner is using or is using through a related company or licensee the mark in commerce on or in connection with the goods/services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce. The mark has been in continuous use in commerce for five consecutive years after the date of registration, or the date of publication under Section 12(c), and is still in use in commerce on or in connection with all goods and/or services as identified above. There has been no final decision adverse to the owner's claim of ownership of such mark for such goods and/or services, or to the owner's right to register the same or to keep the same on the register; and there is no proceeding involving said rights pending and not disposed of either in the Patent and Trademark Office or in the courts.

The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the Owner; and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

Signature: /John E. Ottaviani, Esq / Date: 05/12/2004

Signatory's Name: John E. Ottaviani, Esq

Signatory's Position: Attorney

Mailing Address:

Edwards & Angell, LLP
PO BOX 55874
BOSTON, MA 02205

RAM Sale Number: 109

RAM Accounting Date: 05/13/2004

Serial Number: 74529131

Internet Transmission Date: Wed May 12 15:26:44 EDT 2004

TEAS Stamp: USPTO/S08N15-641722634-20040512152644098

070-2155905-2002ff1a6631cb21d7771f8fd66

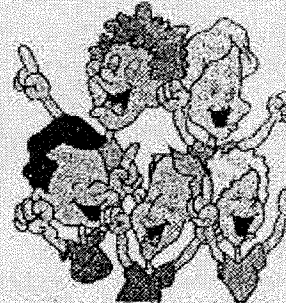
92af4f-DA-109-20040512145402605391

OVER 77 YEARS OF TRUSTED CAR CARE • VOTED BEST AUTO REPAIR

Apex Tire & Service Center, LLC

1 School Street, Pawtucket, RI 02860
Monday-Friday 8am-5:30pm • Saturday 8am-2pm

401-725-0540

RI EMISSIONS
SAFETY
TESTINGOfficial
Inspection Station**SAVE OVER**
\$100.00**ON AWARD WINNING AUTO SERVICE WITH THESE COUPONS!****\$5 off**
Apex Price
**Every Tire
Purchased****Take an additional
\$5.00* off every
tire purchased**

*Can be used for up to 4 tires.

Not to be used in conjunction with other offers. Coupons must
be presented at time of sale. No adjustments on prior sales.
Expires October 31, 2003. #TC-01

Apex Tire & Service Center, LLC

\$20 off
Apex Price
**Alignment
Special****With the
purchase of two
or more tires**Not to be used in conjunction with other offers. Coupons must
be presented at time of sale. No adjustments on prior sales.
Expires October 31, 2003. #TC-04

Apex Tire & Service Center, LLC

\$10 off
Apex Price
**Battery
Special****EXIDE®**
Maintenance Free BATTERY

*Not valid on warranty replacements

Not to be used in conjunction with other offers. Coupons must
be presented at time of sale. No adjustments on prior sales.
Expires October 31, 2003. #TC-02

Apex Tire & Service Center, LLC

\$24.99
Apex Price
**Winter/Summer
Coolant Service**• Drain & refill radiator with
required amount of anti-freeze.
(extra charge for anti-freeze)• Check belts, hoses, battery and
system.Not to be used in conjunction with other offers. Coupons must
be presented at time of sale. No adjustments on prior sales.
Expires October 31, 2003. #TC-05

Apex Tire & Service Center, LLC

\$20 off
Apex Price
**Brake System
Special**• Replace Pads or Shoes
• Clean & Repack Bearings
• Resurface Rotors or Drums
• Replacement Warranty
**WAGNER
Brake Products**Not to be used in conjunction with other offers. Coupons must
be presented at time of sale. No adjustments on prior sales.
Expires October 31, 2003. #TC-03

Apex Tire & Service Center, LLC

\$19.99
Apex Price
**Easy Oil &
Lube Special**• 10 point special
• Up to 5 qts. Pennzoil Oil
• New Pennzoil Oil Filter
• Top off all fluidsNot to be used in conjunction with other offers. Coupons must
be presented at time of sale. No adjustments on prior sales.
Expires October 31, 2003. #TC-06

Apex Tire & Service Center, LLC

WE OFFER COMPLETE AUTOMOTIVE SERVICE FOR YOUR CAR OR LIGHT TRUCK AT LOW APEX PRICES.**Save Everyday on the brand name tires you want.****Guaranteed
Low Prices!!****GENERAL TIRE****MICHELIN****PIRELLI****DUNLOP****Continental®****GOODYEAR****Michelin Tire****Firestone****TOYO****BF Goodrich****HELP WANTED****JOIN THE TEAM THAT WAS VOTED #1 BEST AUTO REPAIR & AWARD WINNING TIRE STORE**

Service Technician

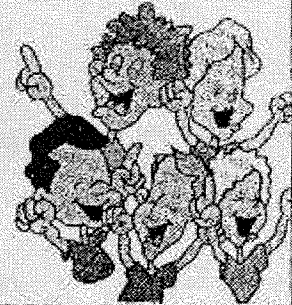
Experience in engine diagnostics & tune-up necessary. Full-time hours available at our Pawtucket Tire & Service Center. We offer an immediate, store-wide discount, highly competitive salary, and a benefits program. Apply in person at our Pawtucket Tire Center or fax or send your resume or application to:

Apex.Human Resources
100 Main Street Pawtucket, RI 02860
Fax: 401-729-7215

Apex is an equal opportunity employer

OVER 77 YEARS OF TRUSTED CAR CARE • VOTED BEST AUTO REPAIR

Apex Tire & Service Center, LLC

1 School Street, Pawtucket, RI 02860
Monday-Friday 8am-5:30pm • Saturday 8am-2pm**401-725-0540****RI** EMISSIONS
SAFETY
TESTING**Official
Inspection Station****SAVE OVER
\$100.00****ON AWARD WINNING AUTO SERVICE WITH THESE COUPONS!****\$5 off**
Apex Price
**Every Tire
Purchased****Take an additional
\$5.00* off every
tire purchased**

*Can be used for up to 4 tires.

Not to be used in conjunction with other offers. Coupons must
be presented at time of sale. No adjustments on prior sales.
Expires October 31, 2003. #TC-01**Apex Tire & Service Center, LLC****\$20 off**
Apex Price
**Alignment
Special****With the
purchase of two
or more tires**Not to be used in conjunction with other offers. Coupons must
be presented at time of sale. No adjustments on prior sales.
Expires October 31, 2003. #TC-04**Apex Tire & Service Center, LLC****\$10 off**
Apex Price
**Battery
Special****EXIDE®
Maintenance Free BATTERY**

*Not valid on warranty replacement

Not to be used in conjunction with other offers. Coupons must
be presented at time of sale. No adjustments on prior sales.
Expires October 31, 2003. #TC-02**Apex Tire & Service Center, LLC****\$24.99**
Apex Price
**Winter/Summer
Coolant Service**• Drain & refill radiator with
required amount of anti-freeze.
(extra charge for anti-freeze)
• Check belts, hoses, battery and
system.Not to be used in conjunction with other offers. Coupons must
be presented at time of sale. No adjustments on prior sales.
Expires October 31, 2003. #TC-05**Apex Tire & Service Center, LLC****\$20 off**
Earth Aide
**Brake System
Special**• Replace Pads or Shoes
• Clean & Repack Bearings
• Resurface Rotors or Drums
• Repack Brake Products
• Repack Brake Products
**WAGNER
Brake Products**Not to be used in conjunction with other offers. Coupons must
be presented at time of sale. No adjustments on prior sales.
Expires October 31, 2003. #TC-03**Apex Tire & Service Center, LLC****\$19.99**
Apex Price
**Easy Oil &
Lube Special**• 10 point special
• Up to 5 qts. Pennzoil Oil
• New Pennzoil Oil Filter
• Top off all fluidsNot to be used in conjunction with other offers. Coupons must
be presented at time of sale. No adjustments on prior sales.
Expires October 31, 2003. #TC-06**Apex Tire & Service Center, LLC****WE OFFER COMPLETE AUTOMOTIVE SERVICE FOR YOUR CAR OR LIGHT TRUCK AT LOW APEX PRICES.****Save Everyday on the brand name tires you want.****Guaranteed
Low Prices!!****GENERAL TIRE****GOODYEAR****Michelin****Firestone****DUNLOP****Continental®****W Motawik Tire****Firestone****TOYO****BF Goodrich****HELP WANTED****JOIN THE TEAM THAT WAS VOTED #1 BEST AUTO REPAIR & AWARD WINNING TIRE STORE**

Service Technician

Experience in engine diagnostics & tune-up necessary. Full-time hours available at our Pawtucket Tire & Service Center. We offer an immediate store wide discount, highly competitive salary, and a benefits program. Apply in person at our Pawtucket Tire Center or fax or send your resume or application to:

Apex.Human Resources
100 Main Street, Pawtucket, RI 02860
Fax: 401-729-7215

Apex is an equal opportunity employer

FEE RECORD SHEET

Registration Number: 2155905

Serial Number: 74529131



RAM Sale Number: 109

Total Fees: \$600

RAM Accounting Date: 20040513

<u>Transaction</u>	<u>Fee Code</u>	<u>Transaction Date</u>	<u>Fee per Class</u>	<u>Number of Classes</u>	<u>Total Fee</u>
§8 affidavit	7205	05/12/2004	\$100	2	\$200
§15 affidavit	7208	05/12/2004	\$200	2	\$400

EXHIBIT I

Domain Whois Information

apexstores.com

CSC Corporate Domains(sm) - Expert Global Domain Name
Management for Corporations, Law Firms and IP Professionals

Contact us at corporatedomains@cscinfo.com or 888-250-6159 to learn more
about our worldwide domain name, DNS and digital certificate capabilities.

NOTICE: You are not authorized to access or query our WHOIS database through
the use of high-volume, automated, electronic processes or for the purpose
or purposes of using the data in any manner that violates these terms of use.
The Data in CSC Corporate Domains' WHOIS database is provided by CSC
Corporate Domains for information purposes only, and to assist persons in
obtaining information about or related to a domain name registration record.
CSC Corporate Domains does not guarantee its accuracy. By submitting a WHOIS
query, you agree to abide by the following terms of use: you agree that you
may use this Data only for lawful purposes and that under no circumstances
will you use this Data to: (1) allow, enable, or otherwise support the
transmission of mass unsolicited, commercial advertising or solicitations via
direct mail, e-mail, telephone, or facsimile; or (2) enable high volume,
automated, electronic processes that apply to CSC Corporate Domains (or its
computer systems). CSC Corporate Domains reserves the right to terminate your
access to the WHOIS database in its sole discretion for any violations by you
of these terms of use. CSC Corporate Domains reserves the right to modify
these terms at any time.

Registrant:

Apex Stores, LLC
LLC Apex Stores
100 Main Street
Pawtucket, RI 02860
US
apexstores@aol.com
+1.4017236108 Fax: +1.4017297215

Domain Name: APEXSTORES.COM

Registrar of Record: Corporate Domains, Inc.

Administrative Contact:

Apex Stores, LLC
LLC Apex Stores
100 Main Street
Pawtucket, RI 02860
US
apexstores@aol.com
+1.4017236108 Fax: +1.4017297215

Technical Contact:

Apex Stores, LLC
LLC Apex Stores
100 Main Street
Pawtucket, RI 02860
US
apexstores@aol.com
+1.4017236108 Fax: +1.4017297215

Domain servers in listed order:

DNS1.CSCDNS.NET
DNS2.CSCDNS.NET

Created on.....: 11-Sep-96
Expires on.....: 10-Sep-08
Record last updated on...: 22-Oct-07

Domain Whois Information

apexathome.com

CSC Corporate Domains(sm) - Expert Global Domain Name
Management for Corporations, Law Firms and IP Professionals

Contact us at corporatedomains@cscinfo.com or 888-250-6159 to learn more
about our worldwide domain name, DNS and digital certificate capabilities.

NOTICE: You are not authorized to access or query our WHOIS database through
the use of high-volume, automated, electronic processes or for the purpose
or purposes of using the data in any manner that violates these terms of use.
The Data in CSC Corporate Domains' WHOIS database is provided by CSC
Corporate Domains for information purposes only, and to assist persons in
obtaining information about or related to a domain name registration record.
CSC Corporate Domains does not guarantee its accuracy. By submitting a WHOIS
query, you agree to abide by the following terms of use: you agree that you
may use this Data only for lawful purposes and that under no circumstances
will you use this Data to: (1) allow, enable, or otherwise support the
transmission of mass unsolicited, commercial advertising or solicitations via
direct mail, e-mail, telephone, or facsimile; or (2) enable high volume,
automated, electronic processes that apply to CSC Corporate Domains (or its
computer systems). CSC Corporate Domains reserves the right to terminate your
access to the WHOIS database in its sole discretion for any violations by you
of these terms of use. CSC Corporate Domains reserves the right to modify
these terms at any time.

Registrant:

Apex Stores, LLC
LLC Apex Stores
100 Main Street
Pawtucket, RI 02860
US
apexstores@aol.com
+1.4017236108 Fax: +1.4017297215

Domain Name: APEXATHOME.COM

Registrar of Record: Corporate Domains, Inc.

Administrative Contact:

Apex Stores, LLC
LLC Apex Stores
100 Main Street
Pawtucket, RI 02860
US
apexstores@aol.com
+1.4017236108 Fax: +1.4017297215

Technical Contact:

Apex Stores, LLC
LLC Apex Stores
100 Main Street
Pawtucket, RI 02860
US
apexstores@aol.com
+1.4017236108 Fax: +1.4017297215

Domain servers in listed order:

DNS1.CSCDNS.NET
DNS2.CSCDNS.NET

Created on.....: 24-Jun-98
Expires on.....: 23-Jun-09
Record last updated on...: 14-Jun-08

EXHIBIT J

Domain Whois Information

apexhealthandfitness.com

CSC Corporate Domains(sm) - Expert Global Domain Name
Management for Corporations, Law Firms and IP Professionals

Contact us at corporatedomains@cscinfo.com or 888-250-6159 to learn more
about our worldwide domain name, DNS and digital certificate capabilities.

NOTICE: You are not authorized to access or query our WHOIS database through
the use of high-volume, automated, electronic processes or for the purpose
or purposes of using the data in any manner that violates these terms of use.
The Data in CSC Corporate Domains' WHOIS database is provided by CSC
Corporate Domains for information purposes only, and to assist persons in
obtaining information about or related to a domain name registration record.
CSC Corporate Domains does not guarantee its accuracy. By submitting a WHOIS
query, you agree to abide by the following terms of use: you agree that you
may use this Data only for lawful purposes and that under no circumstances
will you use this Data to: (1) allow, enable, or otherwise support the
transmission of mass unsolicited, commercial advertising or solicitations via
direct mail, e-mail, telephone, or facsimile; or (2) enable high volume,
automated, electronic processes that apply to CSC Corporate Domains (or its
computer systems). CSC Corporate Domains reserves the right to terminate your
access to the WHOIS database in its sole discretion for any violations by you
of these terms of use. CSC Corporate Domains reserves the right to modify
these terms at any time.

Registrant:

Apex Stores, LLC
LLC Apex Stores
100 Main Street
Pawtucket, RI 02860
US
apexstores@aol.com
+1.4017236108 Fax: +1.4017297215

Domain Name: APEXHEALTHANDFITNESS.COM
Registrar of Record: Corporate Domains, Inc.

Administrative Contact:

Apex Stores, LLC
LLC Apex Stores
100 Main Street
Pawtucket, RI 02860
US
apexstores@aol.com
+1.4017236108 Fax: +1.4017297215

Technical Contact:

Apex Stores, LLC
LLC Apex Stores
100 Main Street
Pawtucket, RI 02860
US
apexstores@aol.com
+1.4017236108 Fax: +1.4017297215

Domain servers in listed order:

DNS2.CSCDNS.NET
DNS1.CSCDNS.NET

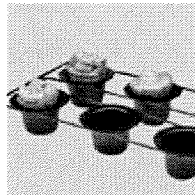
Created on.....: 11-Jun-08
Expires on.....: 11-Jun-09
Record last updated on...: 11-Jun-08

EXHIBIT K

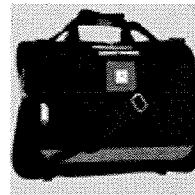
Shop By Room
Bed & Bath
Dining Room
Garden & Patio
Kitchen
Living Room
Apex Green
Apparel
Appliances
Automotive
Collectibles/Coins & Bills
Electronics
Jewelry
Luggage & Bags
Sporting Goods & Fitness
FAQ's

Privacy Policy
Help
Info
Show Order
Email

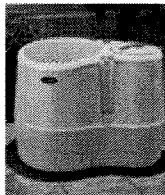
apexstores.comSM



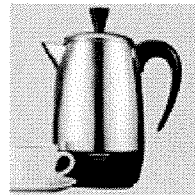
Linking Popover Pan by Norpro
\$12.99



Personal Bag from Calypso by Delsey
\$34.99



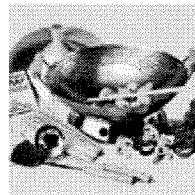
Recirculating Humidifier by Lasko 9.0 gallon
\$79.99



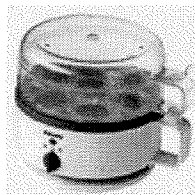
2-8 Cup Percolator/Coffee Pot by Farberware Millennium
\$34.99



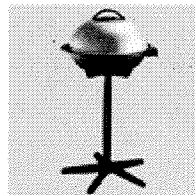
Set 4 Crystal Flutes by Luigi Bormioli
\$18.99



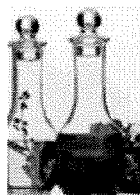
10 PC. Wok Set by Norpro
\$32.99



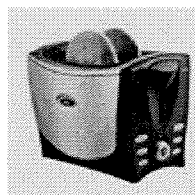
Egg Express 7 Egg Cooker by Krups
\$19.99



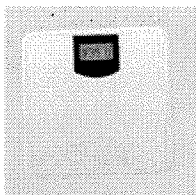
George Foreman Indoor/Outdoor Electric Barbecue Grill by Salton
\$79.99



2 Piece Cruet Set by Michelangelo
\$11.99



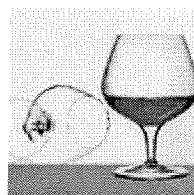
Quilted Metal 2-Slice Toaster by Oster
Regular Price: \$39.99
Apex Price: \$12.99



**Digital Scale by
Sunbeam**

Regular Price: \$44.99

Apex Price: **\$21.99**



**Set of 4 Michelangelo
Brandy Glasses by Luigi
Bormioli**

\$17.99

apex stores®, is the online shopping site of **Apex ®**, the only site with everything for you, your home and your car **on one site**.

Apex ® is a New England based retailer delivering the ultimate in brand name selection and unbeatable customer service. **Apex ®** has **been providing over 80 years** of award winning service to it's customers. Every minute of those 80 years of experience has been incorporated into the service behind this site, to deliver the best possible **Apex Online ®** shopping experience! If you would like to use our award winning **Apex Express** sm delivery service or place and/or pick up your order at one of our **Quickup®** customer service locations, please call 1-800-450-Apex.

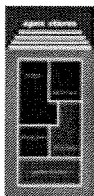
If you have any questions on any specific items, please feel free to e-mail us at info@apexstores.com anytime.

Or call us toll free at

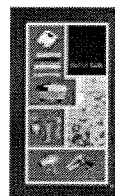
1-800-450-APEX(2739)

Monday-Friday 9 AM - 5 PM EST

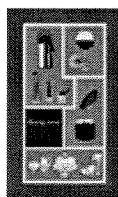
Featured Products



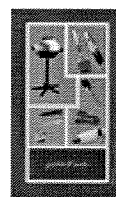
Shop By Room



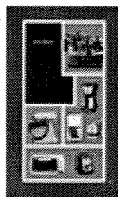
Bed & Bath



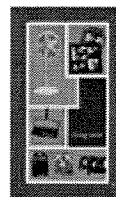
Dining Room



Garden & Patio



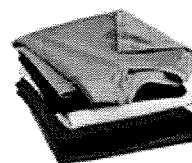
Kitchen



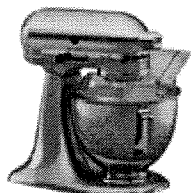
Living Room



Apex Green



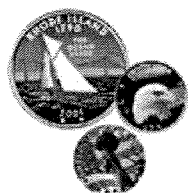
Apparel



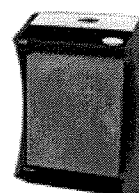
Appliances



Automotive



Collectibles/Coins & Bills



Electronics



Jewelry



Luggage & Bags

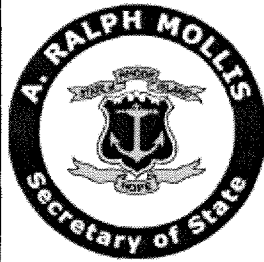


Sporting Goods & Fitness

FAQ's

© copyright 1996-2008 Apex At Home, LLC. All rights reserved

EXHIBIT L



**State of Rhode Island and Providence Plantations
 Office of the Secretary of State**

Corporations Division
 148 W. River Street
 Providence, Rhode Island 02904-2615
 Telephone: (401) 222-3040

Apex Stores, LLC Summary Screen

[?](#)
 Help with this form

[Request a Certificate](#)

The exact name of the Domestic Limited Liability Company: Apex Stores, LLC

Entity Type: Domestic Limited Liability Company

Identification Number: 000107133

Date of Organization in Rhode Island: 06/25/1999

The location of its principal office:

No. and Street: 100 MAIN STREET
 City or Town: PAWTUCKET State: RI Zip: 02860 Country: USA

The mailing address or specified office:

No. and Street: 100 MAIN ST.
 City or Town: PAWTUCKET State: RI Zip: 02860 Country: USA

Agent Resigned: N

Address Maintained: Y

The name and address of the Registered Agent:

No. and Street: EDWARDS ANGELL PALMER & DODGE LLP
2800 FINANCIAL PLAZA
 City or Town: PROVIDENCE State: RI Zip: 02903
 Name: V. DUNCAN JOHNSON, ESQ.

The limited liability company is to be managed by its Managers

The name and business address of each manager:

Title	Individual Name First, Middle, Last, Suffix	Address Address, City or Town, State, Zip Code, Country
MANAGER	ANDREW GATES	100 MAIN ST. PAWTUCKET, RI 02860- USA

Purpose

INVESTMENTS

TITLE: 7-16

Select a type of filing from below to view this business entity filings:

ALL FILINGS

Annual Report

Application for Reservation of Entity Name

Articles of Amendment

Articles of Amendment to Change Management Only

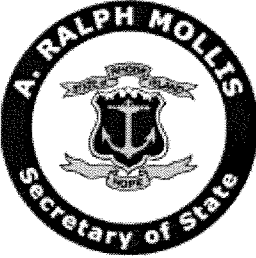
Click Here to access 2006 and 2007 annual reports filed and imaged prior to July 25, 2007. Identification Number is Required

View Filings

New Search

© 2007 - 2008 State of Rhode Island and Providence Plantations
All Rights Reserved

 [Help](#)



**State of Rhode Island and Providence Plantations
 Office of the Secretary of State**

Corporations Division
 148 W. River Street
 Providence, Rhode Island 02904-2615
 Telephone: (401) 222-3040

Apex, LLC Summary Screen



Help with this form

[Request a Certificate](#)

The exact name of the Domestic Limited Liability Company: Apex, LLC

Entity Type: Domestic Limited Liability Company

Identification Number: 000139129

Date of Organization in Rhode Island: 03/30/2004

Effective Date: 03/30/2004

The location of its principal office:

No. and Street: 100 MAIN STREET

City or Town: PAWTUCKET

State: RI

Zip: 02860

Country: USA

The mailing address or specified office:

No. and Street: 100 MAIN STREET

City or Town: PAWTUCKET

State: RI

Zip: 02860

Country: USA

Agent Resigned: N

Address Maintained: Y

The name and address of the Registered Agent:

No. and Street: EDWARDS ANGELL PALMER & DODGE LLP
2800 FINANCIAL PLAZA

City or Town: PROVIDENCE

State: RI Zip: 02903-

Name: V. DUNCAN JOHNSON, ESQ.

The limited liability company is to be managed by its Managers

The name and business address of each manager:

Title	Individual Name First, Middle, Last, Suffix	Address Address, City or Town, State, Zip Code, Country
-------	--	--

Purpose

INVESTMENTS

TITLE: 7-16

Select a type of filing from below to view this business entity filings:

ALL FILINGS

Annual Report

Application for Reservation of Entity Name

Articles of Amendment

Articles of Amendment to Change Management Only

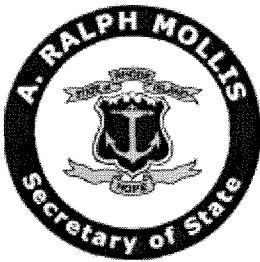
[Click Here](#) to access 2006 and 2007 annual reports filed and imaged prior to July 25, 2007. Identification Number is Required

[View Filings](#)

[New Search](#)

© 2007 - 2008 State of Rhode Island and Providence Plantations
All Rights Reserved





State of Rhode Island and Providence Plantations
Office of the Secretary of State

Corporations Division
148 W. River Street
Providence, Rhode Island 02904-2615
Telephone: (401) 222-3040

Apex At Home, LLC Summary Screen

 Help with this form

[Request a Certificate](#)

The exact name of the Domestic Limited Liability Company: Apex At Home, LLC

Entity Type: Domestic Limited Liability Company

Identification Number: 000118978

Date of Organization in Rhode Island: 06/12/2001

Effective Date: 06/12/2001

The location of its principal office:

No. and Street: 100 MAIN STREET

City or Town: PAWTUCKET

State: RI

Zip: 02860

Country: USA

The mailing address or specified office:

No. and Street: 100 MAIN STREET

City or Town: PAWTUCKET

State: RI

Zip: 02860

Country: USA

Agent Resigned: N

Address Maintained: Y

The name and address of the Registered Agent:

No. and Street: EDWARDS ANGELL PALMER & DODGE LLP

2800 FINANCIAL PLAZA

City or Town: PROVIDENCE

State: RI Zip: 02903-

Name: V. DUNCAN JOHNSON, ESQ.

The limited liability company is to be managed by its Managers

The name and business address of each manager:

Title	Individual Name First, Middle, Last, Suffix	Address Address, City or Town, State, Zip Code, Country
MANAGER	ANDREW A GATES	100 MAIN STREET PAWTUCKET, RI 02860- USA

Purpose

RETAIL

TITLE: 7-16

Select a type of filing from below to view this business entity filings:

ALL FILINGS

Annual Report

Application for Reservation of Entity Name

Articles of Amendment

Articles of Amendment to Change Management Only

Click Here to access 2006 and 2007 annual reports filed and imaged prior to July 25, 2007. Identification Number is Required

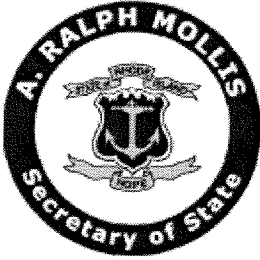
[View Filings](#)

[New Search](#)

© 2007 - 2008 State of Rhode Island and Providence Plantations
All Rights Reserved

[?](#)
Help

EXHIBIT M



**State of Rhode Island and Providence Plantations
 Office of the Secretary of State**

Corporations Division
 148 W. River Street
 Providence, Rhode Island 02904-2615
 Telephone: (401) 222-3040



Help with this form

Zelby Holdings, Inc. Summary Screen

[Request a Certificate](#)

The exact name of the Domestic Profit Corporation: Zelby Holdings, Inc.

Entity Type: Domestic Profit Corporation

Identification Number: 000134607

Date of Incorporation in Rhode Island: 09/10/2003

Effective Date: 09/10/2003

The location of its principal office:

No. and Street: 100 MAIN STREET

City or Town: PAWTUCKET

State: RI

Zip: 02860

Country: USA

The mailing address or specified office:

No. and Street:

City or Town:

State:

Zip:

Country:

Agent Resigned: N

Address Maintained: Y

Name and address of the Registered Agent:

No. and Street: EDWARDS ANGELL PALMER & DODGE LLP

2800 FINANCIAL PLAZA

City or Town: PROVIDENCE

State: RI Zip: 02903-

Name: V. DUNCAN JOHNSON, ESQ.

The officers and all of the directors of the corporation:

Title	Individual Name First, Middle, Last, Suffix	Address Address, City or Town, State, Zip Code, Country
PRESIDENT	ANDREW A GATES	100 MAIN STREET PAWTUCKET, RI 02860- USA

The total number of shares and par value, if any, of each class of stock which the business entity is authorized to issue:

				Total
--	--	--	--	-------

Class of Stock	Series of Stock	Par Value Per Share	Total Authorized Shares <i>Num of Shares</i>	Issued and Outstanding <i>Num of Shares</i>
CWP		\$0.01	8,000.00	100.00

Purpose

TO MAKE AND MANAGE INVESTMENTS

TITLE: 7-1.1-51

Select a type of filing from below to view this business entity filings:

ALL FILINGS

Annual Report

Application for Reservation of Entity Name

Articles of Amendment

Articles of Dissolution

[Click Here](#) to access 2006 and 2007 annual reports filed and imaged prior to July 25, 2007. Identification Number is Required

View Filings

New Search

© 2007 - 2008 State of Rhode Island and Providence Plantations
 All Rights Reserved


[Help](#)

EXHIBIT N

RECEIVED

AUG 11 2008

Manatt, Phelps & Phillips

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

vb

Mailed: August 7, 2008

File:

SEH CMK MLP CDB
GNA KBB NMH SEH
BLA AMH KJT Chron
SMW MWZ PG Client
SAG JS PA Calendar BLA

Cancellation No. 92048378

Apex Stores, LLC and Apex,
LLC

v.

24 Hour Fitness USA, Inc.

M. Catherine Faint,
Interlocutory Attorney:

The motion (filed July 8, 2008) to suspend the proceeding pending final determination of a civil action between the parties filed in the United States District Court for the District of Rhode Island, No. 08-169-ML, is hereby granted as conceded. See Trademark Rules 2.127(a) and 2.117(a).

Accordingly, proceedings are suspended pending final disposition of the civil action between the parties.

The Board also notes that petitioner's involved registrations have recorded assignments in the Assignments Division at Reel/Frame Nos. 3768/0929. It is the practice of the Board to join, rather than substitute an assignee when the assignment occurred after the commencement of the

Cancellation No. 92048378

proceeding in order to facilitate discovery. See TBMP § 512 (2d ed. rev. 2004).

Accordingly, Apex, LLC is joined as a party in this case. All papers filed in this proceeding should use the case title set forth above.

Within twenty days after the final determination of the civil action, the parties shall so notify the Board and call this case up for any appropriate action. During the suspension period, the parties shall notify the Board of any address changes for the parties or their attorneys.

NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:

<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>

http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even

Cancellation No. 92048378

after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>

EXHIBIT O



United States Patent and Trademark Office

[Home](#) | [Site Index](#) | [Search](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)

TTABVue. Trademark Trial and Appeal Board Inquiry System

v1.4

Summary

Query: Party Name is: APEX STORES, LLC**and** Proceeding Status is: ALL**Number of results:** 22

Proceeding Filing Date	Defendant(s), Property(ies)	Plaintiff(s), Property(ies)
<u>91184638</u> 06/16/2008	<u>Apex Electronic Data Interchange, Inc.</u> Mark: APEX EDI S#: <u>77031538</u>	<u>Apex Stores, LLC</u> Mark: APEX S#: <u>74430251</u> R#: <u>1847961</u> Mark: APEX S#: <u>74529131</u> R#: <u>2155905</u> Mark: APEX ONLINE S#: <u>75781411</u> R#: <u>2562812</u> Mark: APEX MALL S#: <u>75836787</u> R#: <u>2657639</u> Mark: APEX STORES S#: <u>75781412</u> R#: <u>2443933</u> Mark: APEX ADVANTAGE S#: <u>78319107</u> R#: <u>2918976</u> Mark: APEX COMPANIES S#: <u>78928036</u> R#: <u>3244685</u> Mark: APEX COMPANIES S#: <u>78928010</u> R#: <u>3356317</u>
<u>92049297</u> 04/29/2008	<u>DYNAMIC HEALTHTECH INC.</u> Mark: APEXLIFT S#: <u>76440071</u> R#: <u>2711317</u>	<u>Apex Stores, LLC</u> Mark: APEX S#: <u>74430251</u> R#: <u>1847961</u> Mark: APEX S#: <u>74529131</u> R#: <u>2155905</u> Mark: APEX ONLINE S#: <u>75781411</u> R#: <u>2562812</u> Mark: APEX MALL S#: <u>75836787</u> R#: <u>2657639</u> Mark: APEX STORES S#: <u>75781412</u> R#: <u>2443933</u> Mark: APEX ADVANTAGE S#: <u>78319107</u> R#: <u>2918976</u> Mark: APEX COMPANIES S#: <u>78928036</u> R#: <u>3244685</u> Mark: APEX COMPANIES S#: <u>78928010</u> R#: <u>3356317</u>
<u>91183479</u> 04/09/2008	<u>Lawrence, Nick</u> Mark: APEX ALARM S#: <u>77044533</u>	<u>Apex Stores, LLC</u> Mark: APEX S#: <u>74430251</u> R#: <u>1847961</u> Mark: APEX S#: <u>74529131</u> R#: <u>2155905</u> Mark: APEX ONLINE S#: <u>75781411</u> R#: <u>2562812</u> Mark: APEX MALL S#: <u>75836787</u> R#: <u>2657639</u> Mark: APEX STORES S#: <u>75781412</u> R#: <u>2443933</u> Mark: APEX ADVANTAGE S#: <u>78319107</u> R#: <u>2918976</u> Mark: APEX COMPANIES S#: <u>78928036</u> R#: <u>3244685</u>
<u>76676959</u> 04/08/2008	<u>AMERICAN PSYCHOLOGICAL ASSOCIATION</u> Mark: THE APEX PROJECT S#: <u>76676959</u>	<u>Apex Stores, LLC</u>
<u>77296515</u> 04/08/2008	<u>Ampak Packaging LLC</u> Mark: APEX 7000 S#: <u>77296515</u>	<u>Apex Stores, LLC</u>

<u>77296516</u>	<u>Ampak Packaging LLC</u>	<u>Apex Stores, LLC</u>
04/08/2008	Mark: APEX 9000 S#: <u>77296516</u>	
<u>77301996</u>	<u>American Multi-Cinema, Inc.</u>	<u>Apex Stores, LLC</u>
03/06/2008	Mark: QUICKUP S#: <u>77301996</u>	
<u>77302028</u>	<u>American Multi-Cinema, Inc.</u>	<u>Apex Stores, LLC</u>
03/06/2008	Mark: QUICKUP S#: <u>77302028</u>	
<u>77201327</u>	<u>Alien Apex Resort, Inc.</u>	<u>Apex Stores, LLC</u>
02/26/2008	Mark: ALIEN APEX RESORT S#: <u>77201327</u>	
<u>78804345</u>	<u>Munters Corporation</u>	<u>Apex Stores, LLC</u>
02/26/2008	Mark: APEX S#: <u>78804345</u>	
<u>77233385</u>	<u>Apex Energy Solutions of Indiana, LLC</u>	<u>Apex Stores, LLC</u>
02/05/2008	Mark: APEX ENERGY SOLUTIONS S#: <u>77233385</u>	
<u>77233390</u>	<u>Apex Energy Solutions of Indiana, LLC</u>	<u>Apex Stores, LLC</u>
02/05/2008	Mark: APEX ENERGY SOLUTIONS S#: <u>77233390</u>	
<u>78928052</u>		<u>Apex Stores, LLC</u>
02/04/2008		Mark: APEX COMPANIES S#: <u>78928052</u>
<u>77031538</u>	<u>Apex Electronic Data Interchange, Inc.</u>	<u>Apex Stores, LLC</u>
12/27/2007	Mark: APEX EDI S#: <u>77031538</u>	
<u>77044533</u>	<u>Lawrence, Nick</u>	<u>Apex Stores, LLC</u>
12/27/2007	Mark: APEX ALARM S#: <u>77044533</u>	
<u>77203191</u>	<u>Entertainment Centers of America, LLC</u>	<u>Apex Stores, LLC</u>
12/27/2007	Mark: APEX CONFERENCE & KARTING CENTER S#: <u>77203191</u>	
<u>77220632</u>	<u>ADCAA, L.L.C.</u>	<u>Apex Stores, LLC</u>
12/27/2007	Mark: APEX DENTAL MILLING S#: <u>77220632</u>	
<u>78665531</u>	<u>Dycom Identity, LLC</u>	<u>Apex Stores, LLC</u>
12/27/2007	Mark: APEX DIGITAL, LLC S#: <u>78665531</u>	
<u>78665536</u>	<u>Dycom Identity, LLC</u>	<u>Apex Stores, LLC</u>
12/27/2007	Mark: APEX DIGITAL S#: <u>78665536</u>	
<u>78665688</u>	<u>Dycom Identity, LLC</u>	<u>Apex Stores, LLC</u>
12/27/2007	Mark: APEX S#: <u>78665688</u>	
<u>92048379</u>	<u>Apex Mills Corp.</u>	<u>Apex Stores, LLC</u>
11/01/2007	Mark: APEX MILLS S#: <u>78706549</u> R#: <u>3129631</u>	Mark: APEX S#: <u>74430251</u> R#: <u>1847961</u> Mark: APEX S#: <u>74529131</u> R#: <u>2155905</u> Mark: APEX ONLINE S#: <u>75781411</u> R#: <u>2562812</u> Mark: APEX MALL S#: <u>75836787</u> R#: <u>2657639</u> Mark: APEX STORES S#: <u>75781412</u> R#: <u>2443933</u> Mark: APEX ADVANTAGE S#: <u>78319107</u> R#: <u>2918976</u> Mark: APEX COMPANIES S#: <u>78928036</u> R#: <u>3244685</u>
<u>92048435</u>	<u>Apex Automobile Parts, Inc.</u>	<u>Apex Stores, LLC</u>
11/01/2007	Mark: APEXAUTO.COM S#: <u>76093775</u> R#: <u>2657874</u>	Mark: APEX S#: <u>74430251</u> R#: <u>1847961</u> Mark: APEX S#: <u>74529131</u> R#: <u>2155905</u> Mark: APEX ONLINE S#: <u>75781411</u> R#: <u>2562812</u> Mark: APEX MALL S#: <u>75836787</u> R#: <u>2657639</u> Mark: APEX STORES S#: <u>75781412</u> R#: <u>2443933</u> Mark: APEX ADVANTAGE S#: <u>78319107</u> R#: <u>2918976</u>

Mark: APEX COMPANIES **S#:** 78928036
R#: 3244685

Results as of 08/19/2008 06:55 PM

Search again

| [.HOME](#) | [INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [CONTACT US](#) | [PRIVACY STATEMENT](#)

EXHIBIT P



United States Patent and Trademark Office

[Home](#) | [Site Index](#) | [Search](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)

TTABVue. Trademark Trial and Appeal Board Inquiry System

v1.4

Summary

Query: Party Name is: APEX, LLC
and Proceeding Status is: ALL
Number of results: 22

Proceeding Filing Date	Defendant(s), Property(ies)	Plaintiff(s), Property(ies)
91185860 08/18/2008	<u>Alien Apex Resort, Inc.</u> Mark: ALIEN APEX RESORT S#: <u>77201327</u>	<u>Apex, LLC</u> Mark: APEX S#: <u>74430251</u> R#: <u>1847961</u> Mark: APEX S#: <u>74529131</u> R#: <u>2155905</u> Mark: APEX ONLINE S#: <u>75781411</u> R#: <u>2562812</u> Mark: APEX MALL S#: <u>75836787</u> R#: <u>2657639</u> Mark: APEX STORES S#: <u>75781412</u> R#: <u>2443933</u> Mark: APEX ADVANTAGE S#: <u>78319107</u> R#: <u>2918976</u> Mark: APEX COMPANIES S#: <u>78928036</u> R#: <u>3244685</u> Mark: APEX COMPANIES S#: <u>78928010</u> R#: <u>3356317</u>
92049766 08/05/2008	<u>RAWLINGS SPORTING GOODS COMPANY, INC.</u> Mark: APEX S#: <u>76292805</u> R#: <u>2746052</u>	<u>Apex, LLC</u> Mark: APEX S#: <u>74430251</u> R#: <u>1847961</u> Mark: APEX S#: <u>74529131</u> R#: <u>2155905</u> Mark: APEX ONLINE S#: <u>75781411</u> R#: <u>2562812</u> Mark: APEX MALL S#: <u>75836787</u> R#: <u>2657639</u> Mark: APEX STORES S#: <u>75781412</u> R#: <u>2443933</u> Mark: APEX ADVANTAGE S#: <u>78319107</u> R#: <u>2918976</u> Mark: APEX COMPANIES S#: <u>78928036</u> R#: <u>3244685</u> Mark: APEX COMPANIES S#: <u>78928010</u> R#: <u>3356317</u>
77260716 08/02/2008	<u>Deutsche Bank Securities Inc.</u> Mark: DB APEX S#: <u>77260716</u>	<u>Apex, LLC</u>
77340137 08/02/2008	<u>APEX SKYPARK</u> Mark: APEX SKYPARK S#: <u>77340137</u>	<u>Apex, LLC</u>
92049725 07/29/2008	<u>Fujitec America, Inc.</u> Mark: HSA-APEX S#: <u>76208838</u> R#: <u>2743343</u>	<u>Apex, LLC</u> Mark: APEX S#: <u>74430251</u> R#: <u>1847961</u> Mark: APEX S#: <u>74529131</u> R#: <u>2155905</u>
91185306 07/20/2008	<u>AMERICAN PSYCHOLOGICAL ASSOCIATION</u> Mark: THE APEX PROJECT S#: <u>76676959</u>	<u>Apex, LLC</u>
91185341 07/20/2008	<u>Ampak Packaging LLC</u> Mark: APEX 7000 S#: <u>77296515</u>	<u>Apex, LLC</u> Mark: APEX S#: <u>74430251</u> R#: <u>1847961</u> Mark: APEX S#: <u>74529131</u> R#: <u>2155905</u> Mark: APEX ONLINE S#: <u>75781411</u> R#: <u>2562812</u> Mark: APEX MALL S#: <u>75836787</u> R#: <u>2657639</u> Mark: APEX STORES S#: <u>75781412</u>

77279694 Min, Moon Ki
 07/15/2008 **Mark:** A I C AND APEX IVY **S#:**77279694

77275387 Apexone Microeletronics Ltd.
 06/30/2008 **Mark:** A **S#:**77275387

91184958 American Multi-Cinema, Inc.
 06/28/2008 **Mark:** QUICKUP **S#:**77301996
Mark: QUICKUP **S#:**77302028

91184717 Munters Corporation
 06/18/2008 **Mark:** APEX **S#:**78804345

92049516 BENTLEY SYSTEMS, INCORPORATED
 06/17/2008 **Mark:** APEX **S#:**76374641 **R#:**2726681

92049479 APEX LEARNING INC.
 06/10/2008 **Mark:** APEX LEARNING **S#:**75853503
R#:2724678

76676050 Apex Data Services, Inc.
 06/07/2008 **Mark:** APEX COVANTAGE **S#:**76676050

77243433 Apex Pavers, Inc
 06/07/2008 **Mark:** APEX PAVERS **S#:**77243433

92049438 Apex Biotechnology Corp.
 06/03/2008 **Mark:** APEX BIOTECHNOLOGY CORP
S#:76157260 **R#:**2720410

78831223 NORTH AMERICAN COMPANY FOR LIFE AND
 05/28/2008 HEAL TH INSURANCE
Mark: ADDVANTAGE **S#:**78831223

92049371 AAPEX Electronics Inc.
 05/20/2008 **Mark:** A APEX **S#:**78132142 **R#:**2717605

R#:2443933
Mark: APEX ADVANTAGE **S#:**78319107
R#:2918976
Mark: APEX COMPANIES **S#:**78928036
R#:3244685
Mark: APEX COMPANIES **S#:**78928010
R#:3356317

Apex, LLC

Apex, LLC

Apex, LLC

APEX, LLC
Mark: APEX ONLINE **S#:**75781411
R#:2562812
Mark: APEX **S#:**74430251 **R#:**1847961
Mark: APEX **S#:**74529131 **R#:**2155905
Mark: APEX MALL **S#:**75836787 **R#:**2657639
Mark: APEX STORES **S#:**75781412
R#:2443933
Mark: APEX COMPANIES **S#:**78928010
R#:3356317
Mark: APEX COMPANIES **S#:**78928036
R#:3244685
Mark: APEX ADVANTAGE **S#:**78319107
R#:2918976

Apex, LLC
Mark: APEX **S#:**74430251 **R#:**1847961

Apex, LLC
Mark: APEX **S#:**74430251 **R#:**1847961
Mark: APEX **S#:**74529131 **R#:**2155905
Mark: APEX ONLINE **S#:**75781411

R#:2562812
Mark: APEX MALL **S#:**75836787 **R#:**2657639
Mark: APEX STORES **S#:**75781412
R#:2443933

Mark: APEX ADVANTAGE **S#:**78319107
R#:2918976
Mark: APEX COMPANIES **S#:**78928036
R#:3244685
Mark: APEX COMPANIES **S#:**78928010
R#:3356317

Apex, LLC

Apex, LLC

Apex, LLC

Apex, LLC

Apex, LLC
Mark: APEX **S#:**74430251 **R#:**1847961
Mark: APEX **S#:**74529131 **R#:**2155905

92049380 Micro-Ear Technology, Inc.
05/20/2008 **Mark:** APEX **S#:**76441166 **R#:**2717489

77073352 Robert A. Toigo Foundation
05/06/2008 **Mark:** TOIGO APEX ADVANCING
PROFESSIONAL EXCELLENCE **S#:**77073352

77163873 Life BioScience, Inc.
05/06/2008 **Mark:** APEX **S#:**77163873

77340132 APEX SKYPARK
05/06/2008 **Mark:** APEX SKYPARK **S#:**77340132

Mark: APEX ONLINE **S#:**75781411
R#:2562812
Mark: APEX MALL **S#:**75836787 **R#:**2657639
Mark: APEX STORES **S#:**75781412
R#:2443933
Mark: APEX ADVANTAGE **S#:**78319107
R#:2918976
Mark: APEX COMPANIES **S#:**78928036
R#:3244685
Mark: APEX COMPANIES **S#:**78928010
R#:3356317

Apex, LLC
Mark: APEX **S#:**74430251 **R#:**1847961
Mark: APEX **S#:**74529131 **R#:**2155905
Mark: APEX ONLINE **S#:**75781411
R#:2562812
Mark: APEX MALL **S#:**75836787 **R#:**2657639
Mark: APEX STORES **S#:**75781412
R#:2443933
Mark: APEX ADVANTAGE **S#:**78319107
R#:2918976
Mark: APEX COMPANIES **S#:**78928036
R#:3244685
Mark: APEX COMPANIES **S#:**78928010
R#:3356317

Apex, LLC

Apex, LLC

Apex, LLC

Results as of 08/19/2008 06:57 PM

[Search again](#)

[| .HOME](#) [| INDEX](#) [| SEARCH](#) [| eBUSINESS](#) [| CONTACT US](#) [| PRIVACY STATEMENT](#)

EXHIBIT Q

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

APEX, LLC, :
APEX AT HOME, LLC, :
Plaintiffs, :
v. : CA 08-169 ML
24 HOUR FITNESS USA, INC., :
Defendant. :

REPORT AND RECOMMENDATION

David L. Martin, United States Magistrate Judge

Before the Court is Defendant 24 Hour Fitness' Motion to Dismiss, or Alternatively, Stay Proceedings Pursuant to Rule 12(B)(3) and 28 U.S.C. § 1406(a) (Doc. #14) ("Motion to Dismiss or Stay" or "Motion"). The Motion has been referred to me for preliminary review, findings, and recommended disposition pursuant to 28 U.S.C. § 636(b)(1)(B). A hearing was conducted on August 7, 2008. For the reasons stated herein, I recommend that the Motion be granted to the extent that it seeks to stay proceedings pending a determination by the United States District Court for the Northern District of California that a prior action filed in that district, involving essentially the same parties and similar issues, should proceed.

Facts

This is an action for trademark infringement and related claims brought by two Rhode Island companies against a California corporation. Plaintiffs Apex, LLC, and Apex At Home, LLC ("Plaintiffs"), filed this action on May 5, 2008, against Defendant 24 Hour Fitness USA, Inc. ("24 Hour Fitness" or "Defendant"). Plaintiffs allege that 24 Hour Fitness is infringing their registered Apex trademarks by and through the activities of 24 Hour Fitness' wholly owned subsidiary, Apex

Fitness, Inc. ("Apex Fitness").

By the instant Motion, 24 Hour Fitness seeks to dismiss or stay this action because it filed a complaint for a declaratory judgment in the Northern District of California (the "California Action")¹ on March 27, 2008. In the California action, 24 Hour Fitness seeks a declaration that its registration and use of trademarks containing the word "Apex" do not infringe any of Plaintiffs' trademarks. Having filed the California action almost six weeks before Plaintiffs filed this action, 24 Hour Fitness contends that application of the "first-filed rule"²

¹ When 24 Hour Fitness filed the California Action on March 27, 2008, the trademarks that are the subject of the instant action were owned by Apex Stores, LLC. Subsequently, the trademarks were transferred from Apex Stores, LLC, to Apex, LLC. Following this transfer, 24 Hour Fitness amended the California complaint to add Apex, LLC, and Apex At Home, LLC, as defendants. 24 Hour Fitness also alleged in its amended complaint that the three defendants (Apex Stores, LLC; Apex, LLC; and Apex At Home, LLC) are effectively the same entity. It notes that the Rhode Island Secretary of State Corporations Division lists them as having the same corporate address and agent.

In the interest of exactness, "Plaintiffs" as used in this Report and Recommendation ("R&R") with reference to the California action includes all three Apex entities (Apex Stores, LLC; Apex, LLC; and Apex at Home, LLC). However, "Plaintiffs" as used herein with reference to the instant Rhode Island action includes only Apex, LLC, and Apex At Home, LLC.

² "[T]he first-filed rule' is an equitable doctrine of venue selection followed universally; 'where identical actions are proceeding concurrently in two federal courts ... the first filed action is generally preferred in a choice-of-venue decision.'" Cruz v. Hartford Cas. Ins. Co., C.A. No. 05-38S, 2005 U.S. Dist. LEXIS 9924, at *4 (D.R.I. May 20, 2005) (quoting Feinstein v Brown, 304 F.Supp.2d 279, 280-81 (D.R.I. 2004) (quoting Cianbro Corp. v. Curran-Lavoie, Inc., 814 F.2d 7, 11, (1st Cir. 1987); accord Mediostream, Inc. v. Priddis Music, Inc., No. C 07-2127 PJH, 2007 WL 2790688, at *2 (N.D. Cal. Sept. 24, 2007) ("The 'first-to-file' rule is a generally recognized doctrine of federal comity which permits a district court to decline jurisdiction over an action when a complaint involving the same parties and issues has already been filed in another district."); see also Cruz, 2005 U.S. Dist. LEXIS 9924, at *4 (explaining that there are exceptions to the rule and that the presumption may be overcome by a showing that the first-filed case constituted an

requires that this action be dismissed or stayed.

Plaintiffs object, contending that special circumstances are present which render the "first-filed rule" inapplicable and justify giving priority to this second filed action. In particular, Plaintiffs contend that the California action is an anticipatory suit which 24 Four Fitness filed as a forum shopping tactic. Plaintiffs note that 24 Hour Fitness did not serve or otherwise notify them of the California action until after Plaintiffs had filed and served 24 Hour Fitness with their Complaint. They assert that 24 Hour Fitness acted in bad faith by filing the suit while the parties were engaged in settlement discussions. Plaintiffs also argue that the instant action is broader than the California action and dispute 24 Hour Fitness' contention that Plaintiffs' claims in the Rhode Island action are compulsory counterclaims which must be asserted in the California action. Lastly, Plaintiffs argue that the balance of convenience factors favors the second filed action.

Plaintiffs have moved to dismiss the California Action on the ground that there was no ripe and legitimate "case or controversy" between the parties at the time 24 Hour Fitness filed that action. See M.D. Beauty, Inc. v. Gross, No. C03-3082 SBA, 2003 U.S. Dist. LEXIS 27257, at *8-9 (N.D. Cal. Oct. 27, 2003) ("if a declaratory plaintiff is not in reasonable apprehension of a suit, then a court may not exercise jurisdiction because there is no case or controversy") (citing 28 U.S.C. § 2201). In support of this argument, Plaintiffs stress that "throughout the parties' settlement discussions, Plaintiffs never explicitly or implicitly threatened to sue 24 Hour Fitness." Memorandum of Law in Support of Plaintiffs' Objection to Defendant's Motion to Dismiss, or Alternatively, Stay

improper anticipatory filing).

Proceedings ("Plaintiffs' Mem.") at 13. Plaintiffs' motion to dismiss is scheduled to be heard on September 9, 2008, by the California federal court.

Discussion

The path which this Court should follow relative to the instant Motion was clearly stated by District Judge William E. Smith in Cruz v. Hartford Casualty Insurance Co., C.A. No. 05-38S, 2005 U.S. Dist. LEXIS 9924 (D.R.I. May 20, 2005). In Cruz, the plaintiff similarly argued that a previously filed declaratory judgment action in Texas was an improper anticipatory filing by the defendant and that the balance of convenience favored Rhode Island over Texas as the forum. See id. at *7. Although Judge Smith found that the plaintiff's anticipatory filing argument was "compelling," id., and that the plaintiff's choice of forum, the convenience of the parties, and the state's interest (the underlying tort had occurred in Rhode Island) all favored that the case be heard in Rhode Island, Judge Smith deferred to the Texas court the ultimate decision on whether an exception to the first-filed rule applied. See id. at *8. In doing so, he explained that "case law indicates that the court in which the first-filed case was brought decides the question of whether or not the first-filed rule, or alternatively, an exception to the first-filed rule, applies." Id. (quoting Ontel Prods, Inc. v. Project Strategies Corp., 899 F.Supp. 1144, 1150 n.9 (S.D.N.Y. 1995)).

Other courts have also recognized that the determination of which action should proceed should be made by the court where the first action is filed.

Once the likelihood of substantial overlap between ... two suits [has] been demonstrated, it [is] no longer up to the [second court] to resolve the question of whether both should be allowed to proceed. By virtue of its prior jurisdiction over the common subject matter ... the

ultimate determination of whether there *actually* [is] substantial overlap requiring consolidation ... belong[s] to [the first court]."

Boston & Maine Corp. v. United Transp. Union, 110 F.R.D. 322, 329 (D. Mass. 1986) (quoting West Gulf Mar. Ass'n v. ILA Deep Sea Local 24, 751 F.2d 721, 730 (5th Cir. 1985) (quoting Mann Mfg. Inc. v. Hortex Inc., 439 F.2d 403, 405 (5th Cir. 1971))) (alterations in original); see also Best Western Int'l, Inc. v. Mahroom, No. CV 07-827-PHX-JAT, 2007 U.S. Dist. LEXIS 32969, at *11-12 (D. Ariz. May 3, 2007) (finding "no reason to deviate from the normal rule ... that the first-filed court should consider the exceptions to the first-to-file rule"); Gemco Latinoamerica, Inc. v. Seiko Time Corp., 623 F.Supp. 912, 916 (D.P.R. 1985) ("the district court hearing the first-filed action should determine whether special circumstances dictate that the first action be dismissed in favor of a later-filed action") (quoting Donaldson, Lufkin & Jenrette v. Los Angeles County, 542 F.Supp. 1317, 1321 (S.D.N.Y. 1982)). The late Senior District Judge Raymond J. Pettine of this Court cited this case law in staying a second filed Rhode Island action until the federal district court for the Northern District of Ohio finally adjudicated a first filed action or chose to refrain from exercising its jurisdiction over that action. See SW Indus., Inc. v. Aetna Cas. & Sur. Co., 653 F.Supp. 631, 639 (D.R.I. 1987) (citing West Gulf Mar. Ass'n, Gemco Latinoamerica, Inc., and Donaldson, Lufkin & Jenrette as "cases holding that the decision as to which forum is more appropriate is a prerogative of the court hearing the first-filed action").

Here the California action and the Rhode Island action are closely related. They involve essentially the same parties and the same or closely related claims. Cf. Supervalu Inc. v. Executive Dev. Sys., Inc., Case No. CV-06-329-S-BLW, 2007 U.S. Dist. LEXIS 3141, at *2 (D. Idaho Jan. 12, 2007) (stating that the

parties need not be identical for application of the first-to-file rule, but there must be similarity or substantial overlap). Here there is the danger of conflicting judicial resolutions were this Court to decide the instant Motion. If it denies the Motion and the California court denies Plaintiffs' motion to dismiss, the result will be that there will be two actions, nearly mirror images, being litigated in two different federal courts. In addition, principles of comity and consistency favor allowing the court which has the first filed action before it to consider whether there are special circumstances which warrant an exception to the first-filed rule. Cf. Gemco Latinoamerica, Inc., 623 F.Supp. at 916 ("Absent such a rule, there would exist the possibility of conflicting judicial resolutions as well as a duplication of judicial efforts.").

It is true that to date Plaintiffs have only sought to have the California action dismissed and have not filed a motion to transfer venue to this district. However, Plaintiffs' contention that the first-filed rule does not apply because of special circumstances and because the balance of convenience favors litigating the dispute in Rhode Island clearly would provide a basis for moving to transfer venue. Such a motion would raise directly before the California court the arguments which Apex has made in opposing the instant Motion. This Court assumes that if Plaintiffs' motion to dismiss the California action is denied, they will file a motion to transfer venue. Alternatively, Plaintiffs could move to supplement their existing motion to dismiss by requesting as alternative relief that the declaratory judgment action be transferred to this Court for the reasons Plaintiffs have advanced in opposition to the instant Motion.

In any case, this Magistrate Judge is persuaded that it would be unwise and inappropriate for this Court to decide whether an exception to the first-to-file rule should be made.

That decision should be made by the California federal court.

Conclusion

Accordingly, for the reasons stated above, I recommend that the Motion to Dismiss or Stay be granted to the extent that proceedings in this action be stayed pending a determination by the United States District Court for the Northern District of California whether the prior filed action should proceed. Any objections to this Report and Recommendation must be specific and must be filed with the Clerk of Court within ten (10) days of its receipt. See Fed. R. Civ. P. 72(b); DRI LR Cv 72(d). Failure to file specific objections in a timely manner constitutes waiver of the right to review by the district court and of the right to appeal the district court's decision. See United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ David L. Martin
DAVID L. MARTIN
United States Magistrate Judge
August 15, 2008